

**TRANSNATIONAL HUMAN RIGHTS PRESSURE AT  
CRITICAL POLITICAL JUNCTURES AND THE BEHAVIOR  
OF STRATEGICALLY IMPORTANT, YET “VULNERABLE”,  
TARGET STATES:**

***INSIGHTS FROM THE HORN AND EAST AFRICA***

Thesis

Presented to the Faculty of Arts and Social Sciences

of the University of Zurich

for the degree of Doctor of Philosophy

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Accepted in the fall semester 2018

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Zurich, 2018

# Research Summary

This study challenges the convention in the human rights scholarship that transnational human rights pressure predictably stimulates a positive change in state behavior, particularly when applied to seemingly vulnerable target states. Within-case evidence from the Horn and East Africa exemplify this argument. Insights are drawn from the cases of Ethiopia and Kenya, vulnerable target states in which transnational human rights pressure should have induced a positive human rights change but did not. It rather contributed to the unintended negative outcome of authoritarian entrenchment in state behavior. The study employs the process-tracing methodological approach to trace the impact of transnational human rights pressure applied during specified critical junctures through intermediating processes all the way to the outcome. In addition, a non-linear analytical framework is used to account for the relevant systemic and case-specific contextual factors that have a conditioning impact on how the processes of interest manifest.

As a mechanistic approach to causality requires rich data, both field and archival research strategies were employed; semi-structured expert interviews were the primary data collection instrument. The interview subjects were selected on the basis of purposive and snowball/chain-referral sampling techniques. Three rounds of field research and 60 semi-structured expert interviews were conducted. The two rounds of field research (January/February 2016 and September 2016) took place in Addis Ababa, Ethiopia, while the third (October/November 2017) occurred in Nairobi, Kenya. Of the total 60 interviews, 50 were in-person interviews conducted during the field research, and the remaining 10 were conducted over Skype or phone. All interviews, both in-person and otherwise, were conducted between January 2016 and March 2018. The experts for the interviews included representatives of international and domestic human rights NGOs, human rights activists, journalists, opposition personalities, political and legal analysts, academics and other stakeholders. Moreover, interviews took place with state officials from concerned ministries and departments and representatives of the donor community.

The study inductively develops a context-bound theory of a mechanism with a middle-range generalizability that causally links transnational human rights pressure at critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior. The

results can provide a better explanation of cases in which transnational human rights pressure contributes to a null effect or an unintended negative outcome in state behavior, especially in seemingly vulnerable target states. The study argues that, through a mechanism that has two parts with “productive continuity” of entities/actors engaged in activities (Beach & Pederson, 2013, 2016), transnational human rights pressure ultimately contributed to the unintended negative outcome of authoritarian entrenchment in state behavior in the cases of Ethiopia and Kenya. The first part of the mechanism (Part 1) is named counter-discourse and quiet diplomacy, and the second (Part 2) is named regulatory crackdown. In addition to this theoretical contribution, the study’s potential to make a significant methodological contribution in optimizing the practical application of theory-building process-tracing, a less developed and applied variant this study uses, is immense. The analysis of the relevant systemic and case-specific contextual factors’ conditioning impact shows why the processes of interest played out the way they did, which also presents theoretical and practical implications. Overall, the insights from this study, especially from the recommendations offered in Chapter 7, provide a foundation for future policy interventions.

# Acknowledgements

I owe everything to my parents, who, from early on, encouraged me to dream bigger than the circumstances of my life. Thank you for giving me the much-needed freedom to imagine a world of possibilities, where even the sky cannot limit to what one can achieve. If nothing else, this shows that you have succeeded in raising a daughter who is not complacent with the things in her reach. Congratulations!

I would like to express my deepest gratitude to the members of my doctoral committee - PD. Dr. Elham Manea, Prof. Dr. Marco Steenbergen, and Prof. Dr. Anita Gohdes. Without their relentless support, scientific and beyond, this Ph.D. would not have been possible. I am forever indebted to Elham for taking a chance on me; thank you for making the opportunity accessible. I would like to thank Marco for his unwavering and continued support from the very beginning. Anita, while you joined the committee at a later stage, your remarkable guidance was instrumental in getting the manuscript into its current shape. Thank you!

I am grateful for all the support that I have received from the Department of Political Science over the years. A special thanks goes to the Managing Director, Dr. Petra Holtrup, who has been of great help since the day I enrolled.

A heart full of thanks goes to Su, Chan and Alfie, my colleagues at the Institute, who I sarcastically call “my tribe.” The whole experience would not have been enjoyable with all the challenges, if it were not for the good laughs that we had. I would like to also thank Zara and Judith for the meaningful conversations and more.

Fikeraddis, the experience of having someone like you who seems to be custom-made just for me tempts me to believe in luck. But, again, “there is no such thing,” as you would say. Sure, I agree with the famous saying - “luck is when preparedness meets an opportunity.” But how do you explain us with this logic? I want to see you try. In my mind, you are already struggling to make sense. This is funny!

Last, but certainly not least, I want to thank the African Students Association in Zurich (ASAZ) and its members, a community that I call my own. It has been an honor to serve on the board of such a truly Pan-Africanist initiative.

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# Acronyms

AEG: Aid Effectiveness Group  
AES: Aid Effectiveness Secretariat  
AfDB: African Development Bank  
AfriCOG: Africa Centre for Open Governance  
AFRICOM: United States Africa Command  
AI: Amnesty International  
AMISOM: African Union Mission in Somalia  
ATP: Anti-Terrorism Proclamation  
ATPU: Anti-Terrorism Police Unit  
AU: Africa Union  
C: causal condition  
CEDAW: Convention on the Elimination of All Forms of Discrimination Against Woman  
CIPEV: Commission of Inquiry into Post-Election Violence  
CIVICUS: World Alliance for Citizen Participation  
CJTF-HOA: Combined Joint Task Force – Horn of Africa  
CRC: Convention on the Rights of the Child  
CRPD: Convention on the Rights of Persons with Disabilities  
CSA: Civil Society Agency  
CSOs: civil society organizations  
CSP: Charities and Societies Proclamation  
CS-RG: Civil Society Reference Group  
CTF-I50: Combined Task Force 150  
DAC: Development Assistance Committee  
DAG: Development Assistance Group  
DCG: Donor Coordination Group  
DFID: Department for International Development  
EAC: East African Community  
EHRC: Ethiopian Human Rights Commission  
EHRCO: Ethiopian Human Rights Council

EPRDF: Ethiopian People’s Revolutionary Democratic Front  
EU: European Union  
FDI: Foreign Direct Investment  
FGS: Federal Government of Somalia  
GAVI: Global Alliance for Vaccines and Immunization  
GCAO: Government Communications Affairs Office  
GDP: Growth Domestic Product  
GERD: Grand Ethiopian Renaissance Dam  
GTP: Growth and Transformation Plan  
HDI: Human Development Index  
HRCO: Human Rights Council  
HRW: Human Rights Watch  
ICC: International Criminal Court  
ICCPR: International Covenant on Civil and Political Rights  
ICERD: International Convention on the Elimination of All forms of Racial Discrimination  
ICESCR: International Covenant on Economic, Social and Cultural Rights  
ICJ-Kenya: International Commission of Jurists (Kenya Section)  
ICNL: International Centre for Not-for-Profit Law  
ICU: Islamic Courts Union  
IDLO: International Development Law Organization  
IGAD: Intergovernmental Authority on Development  
IMF: International Monetary Fund  
KHRC: Kenya Human Rights Commission  
KLRC: Kenya Law Reform Commission  
KNCHR: Kenya National Commission on Human Rights  
KPTJ: Kenyans for Peace with Truth and Justice  
LGBT: lesbian, gay, bisexual, and transgender  
M: mechanism  
MOFA: Ministry of Foreign Affairs  
NGOs: non-governmental organizations  
O: outcome

OAU: Organization of Africa Unity  
ODA: Official Development Assistance  
ODM: Orange Democratic Movement  
OECD: Organisation for Economic Co-operation and Development  
OHCHR: Office of the United Nations High Commissioner for Human Rights  
OI: Oakland Institute  
OLF: Oromo Liberation Front  
ONLF: Ogaden National Liberation Front  
PBO: Public Benefit Organizations  
PBS: Promotion of Basic Services  
PNU: Party of National Unity  
R2P: Responsibility to Protect  
SAPs: Structural Adjustment Programs  
TFG: Transitional Federal Government  
TNG: Transitional National Government  
UDHR: Universal Declaration of Human Rights  
UN: United Nations  
UNDP: United Nations Development Program  
UNSC: United Nations Security Council  
UPR: Universal Periodic Review  
US: United State  
USD: US Dollars  
USAID: United States Agency for International Development  
WB: World Bank

# Chapter I

## Introduction

During his state visit to six African countries in March 1998, President Bill Clinton applauded “the new generation of African leaders” for their commitment to democracy and economic reforms. Among others, these leaders, who were also celebrated as “the new breed,” included Paul Kagame of Rwanda, Meles Zenawi of Ethiopia, Yoweri Museveni of Uganda and Isaias Afewerki of Eritrea. They all took office in the early years of the 1990s, except for Yoweri Museveni, who assumed power in 1986. They were also considered to be the antithesis of the “big-men” syndrome that signified the previous African leadership. Such an assumption would never have been made if one could fast-forward time: three of the above are still in power, while Meles Zenawi died in office in 2012. These leaders have slowly abandoned the conventional ways of holding onto power, instead experimenting with other means, such as manipulating legal frameworks to make sure that they stay in power for as long as possible. They learn from each other about the “worst practices,” and they show support for one another in what has come to be known as “authoritarian solidarity.”

The unity showed against the International Criminal Court (ICC) for its attempt to prosecute Sudan’s president Omar Hassan al-Bashir and Kenya’s president Uhuru Kenyatta provides a case in point. In an initiative led by Kenya, the Africa Union (AU), in its extraordinary session in October 2013, considered a collective withdrawal from the ICC. Though this has not happened, the session did pass a resolution calling upon the Court to suspend the cases of Uhuru Kenyatta and his Deputy William Ruto, which were ongoing at the time. Further, it requested a future grant of immunity from such prosecutions for sitting heads of state. Subsequently, an amendment that entrenches impunity was incorporated in the Protocol on the Statute of the African Court of Justice and Human Rights in June 2014. Since then, this regional Court extends immunity to African heads of state and senior government officials. The global backsliding of the promotion of liberal ideals such as human rights has enabled this authoritarian entrenchment, which has come to signify the current, post-9/11 international environment in which security and economic factors take precedence. As such, transnational human rights advocacy networks find it increasingly challenging to effect change on the ground, even in target states that are seemingly

vulnerable to transnational human rights pressure. After all, more pressure does not necessarily contribute to a positive human rights change.

## **1.1 Existing knowledge and critique**

Empirical research on the impact of transnational human rights pressure on state behavior is fairly recent. Existing literature is profoundly concerned with explaining how transnational human rights pressure stimulates a positive change in state behavior.<sup>1</sup> According to Brysk (1993), the change should surpass a mere termination of repression. This can best be captured by the term “internalization,” the final stage of a three-stage “life cycle” of norms, which is preceded by “norm emergence” (first stage) and “norm cascade” (second stage) (Finnemore & Sikkink, 1998). At this phase of a norm socialization process, “international human rights norms are fully institutionalized domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law” (Risse, Ropp, & Sikkink, 1999: 33).

Positive change in state behavior is often assumed to follow a predictably progressive, linear chain of pressure. According to the Boomerang Model developed by Keck and Sikkink (1998), once the salience of an issue is raised, followed by favorable changes in target actors’ discursive and procedural positions, there is a higher probability of influencing target states’ policy and behavior. The Spiral Model of human rights change developed by Risse et al. (1999) shares this assumption. In this model, an initially norm-violating target state, pressured by transnational human rights advocacy networks, passes through five different stages before it internalizes human rights norms and displays a norm-compliant behavior. These stages are repression, denial, tactical concessions, prescriptive status, and rule-consistent behavior. The model mentions the probability of a backlash to repression in the middle of the spiral process. However, without explaining how and why this happens, the model argues that the process resumes its progression and eventually results in rule-consistent behavior.

While the conditions for either the success or failure of such pressure are under-specified, the Spiral Model claims to be “generalizable across cases irrespective of cultural, political or economic

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<sup>1</sup> While rationalists emphasize the role of power and materialistic interests, scholars in the constructivist camp base their arguments on the international normative context. Nevertheless, recent studies have started to simultaneously draw on both traditions.

differences” (Risse et al., 1999: 6). This was a major source of criticism (see Schwarz, 2004) until the scholars re-evaluated the model in a follow-up book. By building upon their earlier work, Risse, Ropp, & Sikkink (2013) specified four mechanisms that move target actors from commitment to compliance: coercion, incentives - that is, sanctions and rewards, persuasion and discourse, and capacity building. Furthermore, they addressed the under-specification problem by identifying five scope conditions: regime type, degree of statehood, centralization of rule implementation, and target vulnerability. Although these inclusions broadened its explanatory relevance, the model still lacks a comprehensive explanation about cases in which transnational human rights pressure either failed to induce a positive change in state behavior (null effect) or resulted in an unintended negative outcome. This is due to the model’s principal intent, which is explaining positive human rights change.

Furthermore, existing knowledge assumes that target states’ vulnerability to human rights pressure yields a positive change in state behavior. These states’ “vulnerability to both material and moral leverage” is significant for the success of transnational advocacy aimed at altering human rights practices (Keck & Sikkink, 1998: 207). As stated above, target vulnerability is one of the scope conditions put forth as a necessary condition for the assumptions of the re-evaluated Spiral Model to hold. Target vulnerability is often divided into two dimensions: material and social vulnerability. The former is required for advocacy strategies that intend to invoke material coercion to induce state behavior that is human rights norm-compliant (Risse et al., 2013). This renders target states that do not command significant resources and heavily depend on material benefits, such as foreign aid, vulnerable to transnational human rights pressure. Social vulnerability, on the other hand, is presumed to escalate if the target state actively seeks international legitimacy. Given the high standing of the human rights agenda in contemporary international relations, being labeled a “rogue” or “pariah” by transnational human rights advocacy networks that name and shame poor practices is a position that target states try to avoid at all costs (Krain, 2012; Montgomery, 2004: 22). Burgerman (1998, 2001) has argued that a target state complies with human rights norms only if the domestic political elite cares about the state’s international standing. In other words, target states’ desire to preserve their international reputation is believed to increase their propensity to comply with human rights norms. The fact that human rights issues have ceased to be considered the exclusive domain of states is

considered to cement social vulnerability's momentum in commanding target states' compliance. This effect increases if the states have formal human rights commitments, for instance, if they have ratified binding human rights instruments, such as treaties.

While these assumptions about target states' vulnerability (whether material or social) seem to have attained an almost taken-for-granted status, we often see cases where transnational human rights advocacy networks apply pressure to target states that are assumed to be vulnerable, but these efforts fail to result in a positive human rights change. This calls for a review of mainstream assumptions. More pressure on target states that are materially and/or socially vulnerable does not necessarily induce positive or norm-compliant state behavior. Existing scholarship accepts the possibility of target states compensating their material vulnerability with a lack of social vulnerability and vice versa. However, it does not seem to accept the possibility of a target state being immune to transnational human rights pressure while being materially and socially vulnerable.

Risse et al. (2013: 289) have pointed to the case of Zimbabwe and North Korea as examples of target states that compensate for their considerable material vulnerability with a disregard for international legitimacy, thus becoming resilient to social vulnerability. Burgerman has highlighted the cases of Burma, Guatemala, and Haiti to argue that "a poor and peripheral state could prove less vulnerable to network pressure than one with a more central position in the international system" (1998: 915). The Chinese case, on the other hand, has been featured by Risse et al. (2013: 289) to show how social vulnerability can be counterpoised by material power. After stating that "the structural position of the target state, i.e., its alliances, size, and relative power, partly determines its vulnerability in terms of available points of leverage by which to exert pressure," Burgerman (1998: 914-915) refers to China as the "obvious case" to resist such pressure. She lists material factors such as its wealth, nuclear power position, regional hegemony, huge domestic market, and a veto power in the United Nations Security Council (UNSC) as its leverages for containing its social vulnerability.

## 1.2 The research agenda

Drawing on insights acquired from Hafner-Burton (2008), this study classifies three possible outcomes of transnational human rights pressure on state behavior: positive change, null effect, and unintended negative outcome.<sup>2</sup>

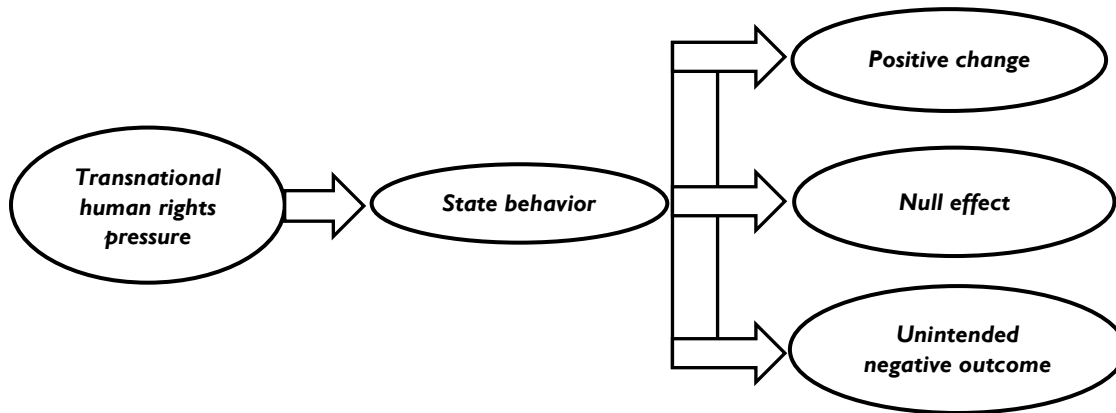


Figure 1. Possible outcomes of transnational human rights pressure on state behavior.

Seminal studies on the impact of transnational human rights pressure on state behavior have focused on explanations about how the former ends up inducing a positive change in the latter (Finnemore & Sikkink, 1998; Keck & Sikkink, 1998; Khagram, Riker, & Sikkink, 2002; Risse, 2000; Risse et al., 1999, 2013; Thomas, 2001). Only a limited number of studies have explored cases in which null effects or unintended negative outcomes were observed in state behavior. Wiest (2007), for instance, has stated that the Boomerang model's hypothesis fails to hold in the Middle East and North Africa region, where integration with international human rights regimes should have been followed by an upsurge in transnational human rights mobilization but did not. Her analysis considers the intertwining of the process with transnational terrorism to be responsible for the failure. Her work underscores the need to examine contextual information in explaining processes. This is specifically important if the outcome happens to be different than expected. Broadly speaking, existing research that tries to explore the causation between international norms and state behavior "tend[s] to highlight only successful cases of norm compliance" (Bae,

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<sup>2</sup> Hafner-Burton (2008: 691-694) provides three possible scenarios for the impact of international publicity of human rights violations on domestic human rights practices. (1) It may be regarded as "cheap talk" that target states simply ignore. (2) It may end up having unintended negative consequences, and (3) it may induce actual human rights reforms.



2007: 11). This is particularly true with qualitative case study research in which, according to Hafner-Burton and Ron, there is high optimism that “international law and human rights advocacy can, eventually, socialize many abusive states into better behavior” (2007: 380).

Beyond having a null effect, transnational human rights pressure might worsen a situation by contributing to an unintended negative outcome. Kuperman’s (2008) study, for instance, that explores the moral hazards of the norm of humanitarian intervention, is worth highlighting here. He argues that, by encouraging some militants to rebel with the expectation of attracting intervention to the atrocities that would follow, the norm may result in genocidal violence that would not occur otherwise. With a comparative case study on Kenya and Uganda, Schmitz (2006) has challenged the conventional assumption that transnational mobilization contributes to positive outcomes in transitional democracies. He discusses the unintentional consequences of transnational human rights advocacy in domestic settings, especially the negative effect on the behavior of political elites and the development of domestic civil society. Wachman (2001) has argued that the human rights pressure aimed at shaming the Chinese government has had a counter-productive outcome beyond failing to foster the expected norm-compliant state behavior. Likewise, based on a survey experiment on women's rights in China, Gruffydd-Jones (2016) has shown the negative effects of a human rights pressure that comes from a threatening geopolitical opponent.

Following on the abovementioned studies, this study also challenges the convention in the human rights scholarship that transnational human rights pressure predictably stimulates a positive change in state behavior, particularly when applied to seemingly vulnerable target states. It exemplifies this argument with within-case evidence from the Horn and East Africa. Insights are drawn from case studies on Ethiopia and Kenya, vulnerable target states in which transnational human rights pressure should have induced a positive human rights change but instead contributed to the unintended negative outcome of authoritarian entrenchment in state behavior. The overarching research questions ask how and why transnational human rights pressure contributes to an unintended negative outcome in state behavior when applied to target states that are seemingly vulnerable?

In order to provide answers to the abovementioned questions, the process-tracing methodological approach is used. The impact of the human rights pressure applied by transnational human rights advocacy networks to advocacy targets during identified critical political junctures - the 2005 and the 2007/8 political crises in Ethiopia and Kenya, respectively, is traced. It is important to thoroughly examine transnational human rights pressure at critical political junctions and subsequent developments because this has a lasting impact, whether positive, of null effect or with an unintended negative outcome. The findings of Dupuy, Ron, & Prakash (2014) state that a government's actions against civil society, e.g., passing restrictive laws, often follow a critical time in a domestic political environment, such as elections. That is why transnational human rights advocacy networks must be mindful of their choice of advocacy strategies, which need to be specifically tailored to the context to have a meaningful effect. The recommendations offered in Chapter 7 address this issue.

### **1.3 Research contributions**

The overall ambition of the study is theory-building; it aims to advance our understanding of the causal relationships of interest based on within-case evidence from the Horn and East Africa. It inductively develops a context-bound theory of a mechanism that causally connects transnational human rights pressure at critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior. This theory, which is of a middle-range generalizability, can be useful in providing a better explanation of cases in which transnational human rights pressure contributes to a null effect or worse - an unintended negative outcome in state behavior, especially in seemingly vulnerable target states. In an attempt to answer the “how” research question, the process-tracing methodological approach is used to trace the impact of the pressure applied by transnational human rights advocacy networks to target actors during identified critical political junctures in the cases of Ethiopia and Kenya. The study argues that, through a mechanism that has two parts with “productive continuity” of entities/actors engaged in activities (Beach & Pederson, 2013, 2016), transnational human rights pressure ultimately contributed to the unintended negative outcome of authoritarian entrenchment in state behavior in these cases. The first part of the mechanism (Part 1) is named counter-discourse and quiet diplomacy (taking place in conjunction), and the second (Part 2) is named regulatory crackdown. The theory-building process-tracing, the variant this study uses, is the least developed and applied.

This study thus has the potential to make a significant methodological contribution by optimizing this variant's practical application.

To answer the “why” research question, a non-linear analytical framework is used to account for the relevant systemic and case-specific contextual factors that have a conditioning impact on how the processes of interest play out. The study aggregates these contextual factors and refers to them as “strategic importance.” The identified systemic factors at the international and regional levels of analysis are alternative powers and the “new scramble” for Africa, and the “security complex” and the war on terror in the Horn of Africa (HOA). The observable implications of these factors in the cases are also presented and analyzed. With regards to the case-specific contextual factors at the domestic level of analysis, political capital, and economic progress and potential are identified. This approach - the blending in of factors at international, regional, and domestic levels of analysis - is a deviation from the existing research's affinity with causal explanations that are linear. While we can mention studies that have tried to account for the conjunction effect of different factors in contributing to outcomes, their adoption of such an approach is usually aimed at explaining positive human rights change. Burgerman (1998), for instance, presents three necessary but not sufficient conditions under which transnational human rights pressure influences a change in the policy or behavior of a target state. These are: the existence of a permissive structural context, the sensitivity of the target state's ruling coalition to the costs of a damaged international reputation, and the existence of organized local human rights activists. Nevertheless, this study intends to follow this approach to illustrate an unintended negative outcome of transnational human rights pressure on state behavior when applied to seemingly vulnerable target states.

In addition to the above-mentioned theoretical and methodological contributions, the study aims to fill other gaps in scientific knowledge, making its contribution to the scholarly literature manifold. By presenting cases in which transnational human rights pressure ultimately contributed to an unintended negative outcome, the study tests the conventional assumption in the literature, that is, that transnational human rights pressure predictably stimulates a positive human rights change. Moreover, the fact that this non-conforming outcome was evidenced in states that are considered to be vulnerable targets calls for a conceptual revisit of the mainstream assumptions

concerning target vulnerability. Last, the insights from this study and, most importantly, the recommendations offered in Chapter 7, provide a foundation for future policy interventions.

## **1.4 Outline of the dissertation**

Chapter 2 presents the research puzzle and its regional domino effect. It also situates the research in the ongoing scholarly discourse with a synthesis of the literature on transnational human rights advocacy networks, human rights consideration in aid allocation, electoral authoritarian regimes, and civic space. Chapter 3 presents the theoretical framework, which is formulated with the process-tracing methodological approach. Furthermore, a detailed discussion on the search for empirical evidence is presented. Chapter 4 presents the association between transnational human rights pressure at critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior. Connecting the dots between the causal condition (C) and the outcome (O) is important for setting the scene for the discussion in Chapter 5 on the two parts of the mechanism that causally connect them. With the aim of providing an answer to the “how” research question, Part 1 of the mechanism, called counter-discourse and quiet diplomacy (taking place in conjunction), and Part 2, regulatory crackdown, are discussed. To show “why” the processes of interest played out the way they did in the case studies, Chapter 6 presents the systemic and case-specific contextual factors that are aggregated under the heading strategic importance. Chapter 7 takes a broader view of the case studies to offer recommendations on the way forward, along with some concluding remarks. The recommendations concern the choice of strategies to be followed by transnational human rights advocacy networks to induce the intended positive human rights change in state behavior. They are based on suggestions put forth by the different experts interviewed for the study.

## Chapter 2

# Positioning the Research in Scholarship

## 2.1 The research puzzle and its regional domino effect

### *The case of Ethiopia*

The case of Ethiopia and the domino effect it has had in triggering a trend of authoritarian entrenchment in the Horn and East Africa is the puzzle that inspired this research endeavor. Ethiopia, a vulnerable target state by all conventional standards, seems to be immune to transnational human rights pressure. Given the mainstream assumptions about target vulnerability, transnational human rights pressure should have induced a positive human rights change in Ethiopia. This study argues that the human rights pressure applied by transnational human rights advocacy networks during the identified critical political juncture, the 2005 political crisis, ultimately contributed to the unintended negative outcome of authoritarian entrenchment in state behavior. As stated in Chapter I, existing research assumes that target states' vulnerability yields a positive change in state behavior. In the following presented some of the characteristics that signify Ethiopia's vulnerability, both material and social.

First, Ethiopia is one of the most foreign aid-dependent states in the world, and aid accounts for roughly 50% to 60% of the national budget (Oakland Institute, 2013). According to Levitsky and Way, "weak states with small, aid-dependent economies (as in much of sub-Saharan Africa) are more vulnerable to external pressure than those in larger countries with substantial military and/or economic power" (2006: 382-383). Second, it is a state that strives to build on its influential standing in regional and continental affairs and the international reputation it holds as a result. Third, Ethiopia is a party to almost all of the major international and regional human rights instruments. It has ratified most of the core international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Woman (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). Furthermore, human

rights are the explicit pillars of the country’s Federal Constitution, which allows the use of international human rights instruments as guiding principles for its interpretation. The aforementioned characteristics of target vulnerability should have conditioned transnational human rights pressure to contribute towards a positive human rights change. However, this has failed to be the case, making it an aberration of the convention.

According to various indicators, the human rights landscape in Ethiopia is worrisome. In *Freedom in the World 2017*, a report on the status of global political rights and civil liberties issued annually by Freedom House (2017b), Ethiopia scores a 6.5 freedom rating (on a scale of 1 = best, 7 = worst). This results in the net freedom status of “not free.” It also has a “not free” freedom of the press status, in which it scores 86 out of 100 (on a scale of 0 = most free, 100 = least free). Moreover, it ranks 150 out of 180 states in the *2018 World Press Freedom Index*, published by Reporters Without Borders (2018).

Ranking Body	Rank	Ranking Scale (best – worst)
UN Human Development Index	174 (2016)	1 – 169
World Bank Rule of Law Index	17 (2016)	100 – 0
World Bank Voice and Accountability Index	24 (2015)	100 – 0
Transparency International	108 (2016)	1 – 176
Freedom House: Freedom in the World	Status: Not Free Political Rights: 7 Civil Liberties: 6 (2016)	Free/Partly Free/ Not Free 1 - 7 1 - 7
Foreign policy: Failed States Index	15 (2017)	177 – 1

Table 1. Ethiopia’s international rankings.<sup>3</sup>

Different human rights monitoring and reporting bodies, including the United States (US) Department of State, portray a gloomy picture of the human rights situation in Ethiopia, which has intensified considerably subsequent to the 2005 political crises. Arbitrary incarceration;

<sup>3</sup> Source: International Center for Not-for-Profit Law (2018b).

torture of political opposition personalities, journalists, and human rights defenders; use of excessive force by security forces against civilian demonstrators; regulatory crackdowns on dissent; forced relocation; political capture of development aid; crimes against humanity; extra-judicial killings; and violations of the rights to freedom of expression, association, and assembly in the context of elections and beyond are the most frequently reported rights violations. Nevertheless, the aid Ethiopia receives continually increases, explaining the widespread use of the expression “the donor darling Ethiopia.” Human rights considerations and aid flow are at odds with each other. The Organization for Economic Co-operation and Development (OECD) ranks Ethiopia fifth among the top 10 Official Development Assistance (ODA) recipients from Development Assistance Committee (DAC) member countries (OECD - DAC, 2017). ODA, developed by the DAC, is the common measure of aid flows. Aid commitments to Ethiopia from all DAC countries and multilateral agencies were 1334.28 (in constant 2016 US Dollars [USD], millions) in 2000, which rose to 4894.94 in 2015.

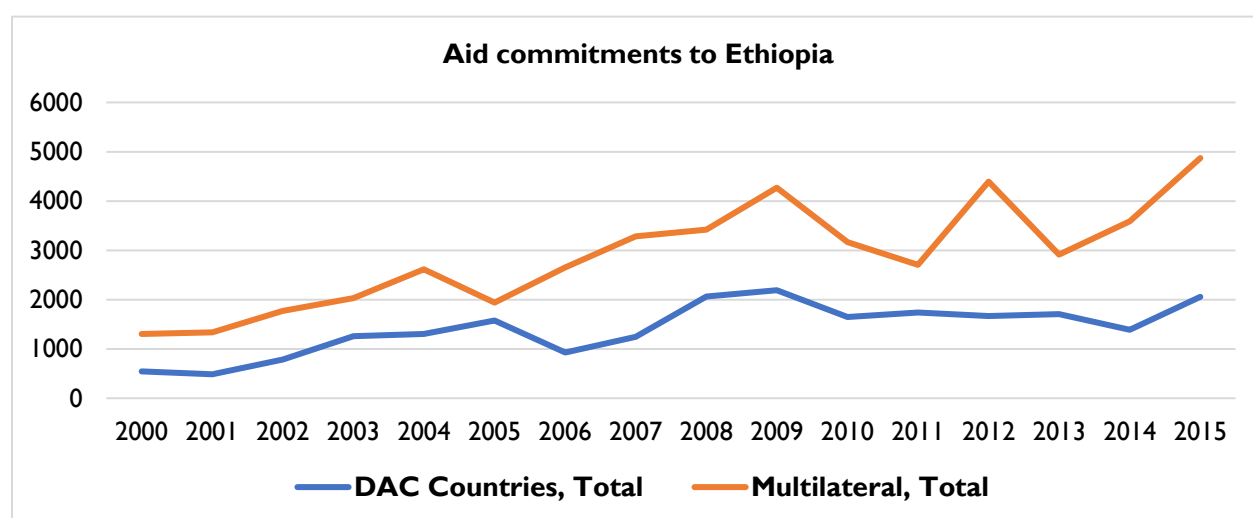


Figure 2. Aid commitments to Ethiopia from DAC countries and multilateral agencies (in constant 2016 USD).<sup>4</sup>

Transnational human rights advocacy networks often call upon Ethiopia’s major donor governments and multilateral agencies, which happen to be traditional/Western, to leverage their influence in pressuring the government into complying with international human rights norms. Despite such advocacy, donors seem to be reluctant to publicly acknowledge or condemn, for

<sup>4</sup> Note: based on data from OECD - DAC (2018).

instance, the persistently reported “political capture” of development aid, let alone taking robust measures regarding wide-ranging rights abuses. In the handful of occasions that they have tried to investigate these allegations, they have been accused of “overlooking evidence” (Oakland Institute, 2013) and not acting upon confirmatory results. As human rights are part of the broader “good governance” agenda that the donor community routinely pushes elsewhere, this stance on Ethiopia demonstrates a double standard at play.

Donors’ “see no evil, hear no evil and speak no evil” approach to the poor human rights practices in Ethiopia (Human Rights Watch, 2008c: 118) is accompanied by the country’s portrayal of a tough stance against transnational human rights pressure, which it frames as foreign interference in its internal affairs. The Ethiopian People’s Revolutionary Democratic Front (EPRDF) coalition-run government in power accuses transnational human rights advocacy networks of an ideologically driven campaign based on the pretext of human rights (see Government Communication Affairs Office, 2009, 2010a, 2010b, 2015; Ministry of Foreign Affairs, 2008, 2010). It depicts them as agents of neo-liberalism, which it has already labeled a dead end to Africa’s development (see Meles, 2006, 2012). It often claims that it is targeted for reasons that are not related to human rights.

The hardline counter-discourse by the EPRDF government, which often borders on name-calling, labels human rights criticisms a blatant attack on states that follow alternative development models rather than neo-liberalism. This refers to its current experiment with the developmental state model. A minimalist definition of this model is a development trajectory that tries to champion economic development by downplaying the relevance of political rights and civil liberties. Beyond the counter-discourse, the government embarked upon a regulatory crackdown to shrink the civic space, radically altering the legal framework to make it inconvenient to monitor, document, and report on its human rights practices. This relentless attempt to effectively institutionalize rule by law is what the study considers to signify the negative outcome of authoritarian entrenchment in state behavior. Here, the Charities and Societies Proclamation (CSP) is a case in point. Right after the passing of the CSP, several individuals who were working on human rights advocacy fled the country, and the remaining few are operating in a climate of fear. They constantly self-censor to avoid violating the provisions of the Proclamation. According



to Human Rights Council (2011: 6), this is “nearly impossible” because the Proclamation is vaguely worded.

When it became operational, the CSP required civil society organizations (CSOs) to re-register in three categories: Ethiopian Charities/Societies, Ethiopian Resident Charities/Societies, and Foreign Charities. Article 14(5) of the CSP only permits “Ethiopian Charities/Societies,”- organizations acquiring “not more than 10% of their funds from foreign sources” and “wholly controlled” by Ethiopians, to work on activities related to human rights, women's rights, children's rights, disability rights, citizenship rights, conflict resolution, and democratic governance. Hence, human rights work is out-of-bounds for domestic organizations receiving more than 10% of their funding from abroad (Ethiopian Resident Charities/Societies) and Foreign Charities. Due to the provisions in the Proclamation that justify excessive government interference, in addition to the abovementioned severe restriction on funding, human rights organizations have decreased in number almost to the point of inexistence. Several have forfeited their mandate to work on issues with no reference to human rights work, and those that struggle to carry on have had to reduce their functions, lay off their workforce, and close offices (Amnesty International, 2012).

### ***Authoritarian entrenchment in the Horn and East Africa***

*Ethiopia is a bad example that shows what it is possible. Kenya is a quick lab where it is tested. Then, the other states in the region get to learn what works and what doesn't.*<sup>5</sup>

Ethiopia has been accused of exporting “worst practices” onto the states in the region, contributing to a trend that Herman (2014) has referred to as “authoritarian contagion.” He states that the current crackdown on the civil society and the independent media in Kenya is the result of “the predictable outcome of the international community’s failure to punish earlier, comparable state-driven repression in Ethiopia.” After all, Ethiopia is a “true regional pioneer” of rule by law, he argues. He has criticized donors’ refusal to use aid as leverage and their prioritization of security and economic issues over democratic performance. As authoritarian regimes are less likely to be stable and/or prosperous in the long run, he considers this “a self-

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<sup>5</sup> Henry Maina, regional director of Eastern Africa at Article 19. In-person interview, October 2017, Nairobi, Kenya.

defeating strategy.” Dunham (2015) has similarly argued that the decline in the freedom ratings of Uganda, Burundi, and Rwanda indicate that they follow in the footsteps of “Ethiopia, which has set the regional standard for repressing dissent with harsh laws on civil society groups, the media, and terrorism.” The figure below shows the decline in the freedom ratings of six states in the region from 2010 through 2017.

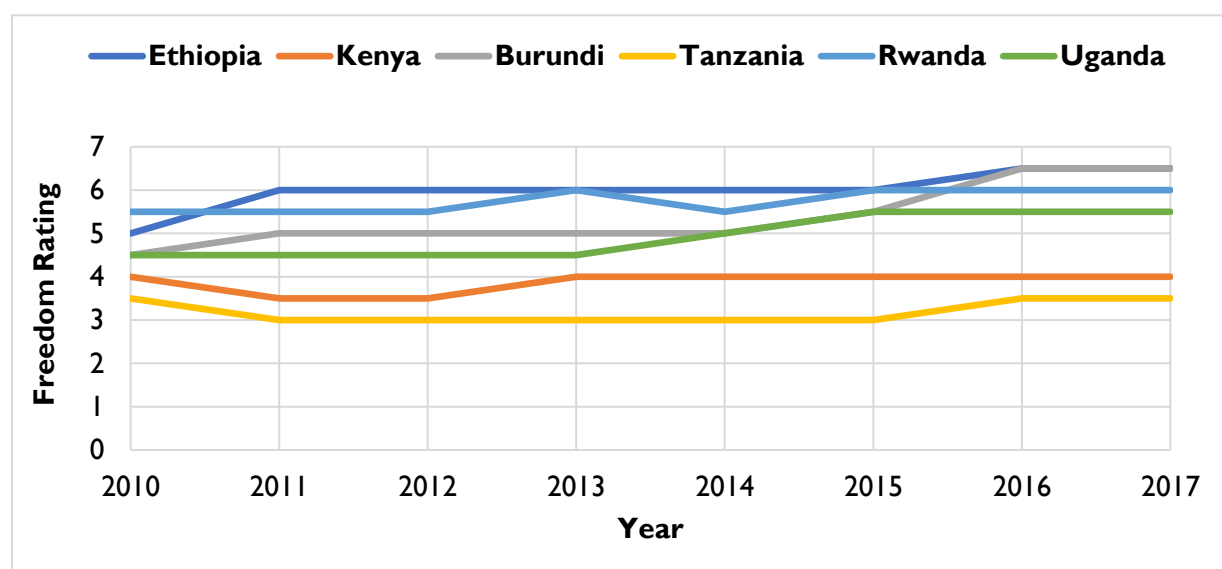


Figure 3. The decline in the freedom ratings of the states in the Horn and East Africa (2010 - 2017).<sup>6</sup>

Kenya’s various attempts to amend the Public Benefit Organizations (PBO) Act of 2013, which has not yet become operational despite court rulings that call for its commencement, demonstrates aspirations similar to Ethiopia’s CSP. Introducing a 15% limit on foreign funding and increasing the executive branch’s influence over the “Public Benefit Organizations Regulatory Authority,” a body that would be established to be responsible for the implementation of the Act, are some of the defining characteristics of the attempted amendments. The amendments have not succeeded so far; if they had, they would have curbed the progressive provisions in the Act. CSOs played an active role in the drafting of the Act; it thus has various provisions that would improve the civic space, when or if they are implemented. To mention just a few, the Act

<sup>6</sup> Note: based on data from *Freedom in the World* report annually published by Freedom House. The report rates the level of political rights and civil liberties on a scale of 1 = best, 7 = worst. Retrieved from <https://freedomhouse.org/report-types/freedom-world>

would provide an opportunity for CSOs to self-regulate and partner with the government, and it would bring together all of the CSOs registered under different legal regimes to be regulated by the Public Benefit Organizations Regulatory Authority.

Other states in the region have successfully passed legislation that is often accused of intending to shrink civic space, and the impact on organizations working on human rights and governance issues has been severe. Uganda's Public Order Management Act of 2013 and Non-Governmental Organizations Act of 2016 are cases in point. Organizations that work to promote the rights of people who identify as lesbian, gay, bisexual, and transgender (LGBT), for instance, are under intense pressure. Pending legislation introduced by the Parliament in October 2014, the Prohibition of Promotion of Unnatural Sexual Practices Bill, would possibly criminalize organizations that promote the rights of the LGBT community if it becomes operational. The bill criminalizes homosexual relationships and the funding/sponsoring of any organization with the intent to promote what it refers to as an “unnatural” sexual practice. The bill is seen by many as the re-introduction of the Anti-Homosexuality Act of 2014, which was nullified in August 2014 on a technicality. While the legislative framework in Uganda may seem permissible on the surface, this is actually not the case. However, it might be so for those working on issues that are “politically and socially acceptable to the Government” (International Center for Not-for-Profit Law, 2018c). This provision of a relatively extended space for organizations that align their focus with the government’s agenda in Uganda is also visible in other states in the region. In a critical analysis of the civic space in the states of the East African Community (EAC), Odhiambo (2017: 5) has identified a trend across the region of using legislative and administrative measures towards shrinking the civic space. He states:

*Arbitrary actions taken against CSOs by regulating authorities, including attempts at deregistration, reluctance on the part of authorities to work with CSOs towards defining standards and enacting more enabling CSO legislation, harassment of human rights activists and media personnel, disappearance or murder of human rights activists and journalists, accusing organizations of funding terrorism where there is no evidence of such involvement, freezing of bank accounts of CSOs, and selective auditing of CSOs by the responsible authorities basically amounting to intimidation.*

## **2.2 Existing research: a synthesis**

### **2.2.1 Transnational human rights advocacy networks**

Transnational human rights advocacy networks are coalitions of like-minded domestic and international actors who promote shared values, principled ideas, and norms (Keck & Sikkink, 1998). They do not advance violence to attain their goal, which differentiates them from other transnational actors, such as terrorist organizations (Price, 2003: 580-581). Even if they operate at international and domestic levels, they are considered a unified single entity (Burgerman, 1998: 909). This is mostly attributed to the advance in communication and transportation technologies (Keck & Sikkink, 1998: 10) and the increased opportunities to establish contacts at different international platforms, easing information exchange between actors at the two levels (Schmitz, 2010).

The network conception of transnational human rights advocacy does not clearly distinguish between the activities of the actors at the two levels of analysis, as doing so would “miss the complex connections among actors within the network” (Burgerman, 1998: 909). With regards to their structure, transnational human rights advocacy networks vary from loosely organized connections to highly centralized ones (Wong, 2008: 4). Khagram et al. (2002: 7) have stated that information exchange lies at the heart of transnational networking, which can be fulfilled by informal contacts. Transnational networks do not advance “sustained coordination of tactics” as do other forms of transnational collective action, such as transnational coalitions and movements.<sup>7</sup> Networks may consist of opposition groups, foundations, churches, trade unions, the media, and others. Furthermore, the concept of a network may also include pressure emanating from within a state's bureaucracy and an international organization (Burgerman, 1998: 908). However, non-governmental organizations (NGOs), both international and domestic, are the centerpiece.

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<sup>7</sup> Khagram et al. (2002: 7-8) define transnational coalitions as domestic and international actors that are formally organized, and their constituencies regularly meet to strategize campaigns and review progress. Transnational social movements, on the other hand, are defined as domestic and international actors linked by a common purpose, and with a capacity to generate coordinated and sustained transnational mobilization to induce social change. They mostly use protest or any other action that threatens the social order. These definitions are, however, “not necessarily comprehensive or mutually exclusive” (2002: 9).

After the adoption of the United Nations (UN) Charter in 1945 and the Universal Declaration of Human Rights (UDHR) in 1948, followed by the subsequent binding instruments, human rights became mainstream in international law and politics (Hafner-Burton & Tsutsui, 2005). This has culminated in its attainment of a global standing, especially after the 1970s (Hafner-Burton & Ron, 2007). The two most comprehensive human rights instruments - namely, the ICCPR and the ICESCR - that, together with the UDHR, constitute the Universal Bill of Rights, came into force in 1976. Most importantly, this period witnessed a proliferation of NGOs with a global reach, and the public grew increasingly attuned to human rights issues (Keck & Sikkink, 1998). These developments created transnational advocacy networks that advocate for the respect of universally acknowledged human rights norms. Furthermore, this period saw a shift in the strategies followed by NGOs to promote and protect human rights. They shifted from lobbying states at intergovernmental platforms such as the UN to “more contentious and distinctly transnational strategies” (Rodio & Schmitz, 2010: 445).

Transnational advocacy has a history that goes beyond globalization (Tarrow, 2005), which can be traced as far back as anti-slavery campaigns (Rabben, 2002). Its prominence in the human rights scholarship, however, became apparent with the proliferation of international human rights NGOs, such as Amnesty International (AI) and Human Rights Watch (HRW) (Schmitz, 2010; Tsutsui & Wotipka, 2004). Treaty ratification by states, especially by authoritarian ones, is mostly token and might not necessarily translate into norm-compliant state behavior (Hafner-Burton & Tsutsui, 2005, 2007; Hathaway, 2002). This creates what Mullerson (1997) has referred to as the “hypocrisy trap.” Hence, transnational human rights advocacy networks serve as “the mediating mechanism between treaty ratification and state compliance” (Wiest, 2007: 141). They constitute one of the five political opportunities that Osa and Corduneanu-Huci (2003) have identified as necessary to result in socio-political mobilization in authoritarian contexts.<sup>8</sup> The existence of political opportunities, which can either be “open” or “closed,” is decisive for the success or failure of transnational collective action (Khagram et al., 2002: 17-20).

Broadly speaking, human rights pressure with the intent of inducing a norm-compliant state behavior - that is, a behavior that complies with the universally accepted human rights norms -

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<sup>8</sup> The other four political opportunities identified are state repression, elite division, influential allies, and media access.

emanates from domestic and international sources. Pressure from foreign governments, international organizations, and international NGOs constitute an international source of compliance, whereas pressure from domestic societal groups and institutions is a domestic source of compliance (Cardenas, 2004, 2007). Although there was already a growing tendency in international relations literature to combine the international and domestic realms<sup>9</sup>, the mainstreaming of the inter-disciplinary research agenda on transnational advocacy has effectively blurred the divide between the two. Early works such as those of Clark (2001), Keck and Sikkink (1998), Khagram et al. (2002), Risse et al. (1999), Sikkink (1993), Smith, Pagnucco, and Lopez (1998), and Tarrow (2005) are credited with introducing and further developing the network conception of human rights advocacy in the study of international relations (Price, 2003; Tang, 2009: 229).

While it shares the constructivist's core emphasis on the role of norms and is often credited with addressing their conventional criticism of downplaying the role of agency in their analysis, this research agenda has blurred the constructivist-rationalist theoretical divide. It foregrounded “an eclectic mix of persuasive and instrumentalist tactics” used by such networks (Price, 2003: 583). It gives equal emphasis to “the power of norms and hard politics” (Tang, 2009: 235). Here, it is pertinent to note that various terminologies are used to refer to transnational advocacy networks. Even the seminal works mentioned above vary in their use of terms. The most frequently used are “principled-issue networks,” “transnational coalitions,” “transnational social movements,” and “transnational civil society.” This is because the research agenda combines two sets of literature from the international relations sub-field of political science and the literature on social movements in sociology (Khagram et al., 2002: 5). The scholars in these fields use different words to refer to the same phenomenon. That is, human rights advocates coordinate efforts that transcend states’ national boundaries with the intention of promoting and protecting human rights norms (Tang, 2009: 230).

In authoritarian settings, domestic groups often reach out to forge alliances with international actors, such as international organizations, foreign states and international NGOs. This is done with the intent of pressuring the state into complying with international human rights norms,

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<sup>9</sup> The “two-level game” approach (Putnam, 1988) is a case in point.

triggering what Keck and Sikkink (1998) have referred to as the boomerang effect by challenging the abusive practices of a state “from above” and “from below” (Brysk, 1993). To better capture the domestic-international dynamics of a human rights pressure and in recognition of NGOs’ role in this enterprise, this study conceptualizes transnational human rights pressure as essentially resulting from the networking of international and domestic human rights NGOs. Together, they are referred to as transnational human rights advocacy networks that use various advocacy strategies to pressure target actors (a target state, influential governments and/or international/regional institutions, such as aid donors) with the aim of bringing about a positive human rights change in a target state.

According to Wong, since international human rights NGOs engage in advocacy outside of their home states in collaboration, though in different degrees of cohesion, with their domestic counterparts, “they are transnational by definition” (2008: 4). Hence, she does not see the point in making a theoretical distinction between international NGOs and transnational networks; for her, the two are one and the same. While this study follows this line of reasoning to some extent, it explicitly accounts for the role of domestic human rights NGOs in this enterprise. For instance, it considers the reports by international human rights NGOs as an output of a transnational effort that also represents the role of domestic human rights NGOs. This would address the criticism against previous studies of giving less emphasis to the domestic dynamics of transnational networking, where domestic members of human rights networks are given a peripheral status in analysis (Schmitz, 2010). Similar criticisms are often raised against research on the institutionalization of international norms, where it is often argued that domestic political context is not given the required weight (Bae, 2007: 6).

The incentive of transnational networking between international and domestic human rights NGOs is a two-way street. For one, international human rights NGOs provide domestic ones with international contacts, funding opportunities, and services. They help legitimize and magnify their causes. In addition, by forging an alliance with domestic groups, international human rights NGOs gain access to first-hand information about human rights violations. The information is usually published in a report to mobilize international outrage against the violations. Given the costly endeavor of maintaining a simultaneous physical presence in different places, networking offers a cost-effective way of monitoring states’ behavior in all corners of the world.

Furthermore, if a network has a broad membership at the two levels, this would increase its legitimacy by addressing the issue of representativeness (Price, 2003: 595).

Beyond their long-established relevance in norm generation, transnational advocacy networks' potential for norm enforcement is a well-demonstrated fact in the literature. Without having to control power and material resources, they shape states' behavior by monitoring their compliance with human rights norms and revealing discrepancies between rhetoric and practice (Khagram et al., 2002; Schmitz, 2010). To this end, they use various advocacy strategies, such as "information politics" and "leverage politics" (Keck & Sikkink, 1998). These strategies can also be categorized as "soft" and "hard" politics. Strategies that rely on information and persuasion, such as information politics, fall into the soft politics category. The calling upon of influential governments and/or international/regional institutions to take action or leverage politics falls into the hard politics category.

In practice, information politics is often corroborated by leverage politics, which is usually associated with "pressure, arm-twisting, and sanctions" (Tang, 2009: 235). Information politics is defined as the strategic framing of information to easily catch the eyes of the public and policy makers. Due to their effective application of this strategy, transnational human rights advocacy networks are increasingly perceived as reliable sources of alternative information (Ron, Ramos, & Rodgers, 2005). Their capability to investigate, document and publicize human rights violations has led to their consideration as "the most important chroniclers of our time" (Montgomery, 2004: 21). In naming and shaming human rights violators, the media is an important partner. Members of transnational human rights advocacy networks usually devise a media strategy to better appeal to the public. According to Ramos, Ron, and Thomas (2007), the media impact increases when reports are targeted at states with higher levels of state repression, economic development, population, and attention from Amnesty International.

Naming and shaming evidently demonstrates the significance of transnational advocacy networks in human rights enforcement (Hafner-Burton, 2008: 693; Krain, 2012; Meernik, Aloisi, Sowell, & Nichols, 2012). The international legal order that, for long, considered human rights the exclusive domain of states has faded. Hence, exposing states' inferior human rights records is an effective tool to encourage compliance with international standards. As they lack the legal status and



resources of states and international organizations, transnational human rights advocacy networks profoundly rely on their capacity to mobilize the global public (Clark, 2001). By subjecting the abusive practices of a target state to international scrutiny, which would potentially damage its international legitimacy, these networks seek to shame the state into making human rights reforms. This task depends on establishing a moral authority based on confirmed norms (Tang, 2009: 230).<sup>10</sup> Besides the damage on the international reputation and legitimacy of target states, naming and shaming exacerbate their susceptibility for a consequent and possibly robust international action. This likelihood became permissible with the primer of the latest international norm, Responsibility to Protect (R2P).

At the 2005 World Summit, the UN General Assembly adopted the R2P. The norm states that the international community has a responsibility to step in to fill the gap when states fail to provide protection for their citizens. Besides this possibility, which is also referred to as humanitarian intervention, an effective application of “leverage politics” by transnational human rights advocacy networks may result in other actions against a target state. States may face the severance of diplomatic relations with other states; expulsion from international organizations; cessation of foreign aid; and the indictment of their leaders at the ICC, as was attempted with Sudan's President Omar Hassan al-Bashir and Kenya's President Uhuru Kenyatta. Nevertheless, states' prioritization of political interests over such normative issues makes it challenging to encourage them to candidly criticize the human rights practices of their peers, let alone agree to take the above-mentioned advanced measures (Lebovic & Voeten, 2009).

In the contemporary international system, in which there is room to tie foreign aid and international cooperation to human rights conditionality, leverage politics - which often aim at affecting incentive structures - is presumed to have a positive impact in inducing a norm-compliant state behavior. It is common to see arguments claiming that human rights compliance increases when military and economic relations are made contingent upon states' performance (Crawford & Klotz, 1999). Hence, transnational human rights advocacy networks try to “utilize the energy of other powerful actors who could in turn connect human rights practices to military and economic aid or to bilateral diplomatic relations” (Tang, 2009: 235). In other words, members of

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<sup>10</sup> See Mitchell & Stroup (2017) for the importance of reputation in establishing NGO authority and legitimacy, and see Gourevitch & Stein (2012) for the challenges of doing so.

a transnational network use formal and/or informal avenues to policy processes in Western states and international organizations with the intention of pressuring them to effect positive change in target states.

A look at the textbook analytical framework developed by Levitsky and Way (2006) to study the role of external pressure in promoting democratic diffusion in the post-Cold War international environment may be insightful. This framework argues that the international system operates along two dimensions of “Western leverage” and “linkage to the West.” Western leverage is defined as states’ vulnerability to external democratizing pressure via mechanisms such as military force, diplomatic pressure, and conditionality. Linkage to the West, on the other hand, is defined as ties with the US, the European Union (EU), and Western-dominated multilateral institutions conditioned on dimensions of economic, geo-political, social, communication, and transnational civil society linkages. The framework stresses the importance of linkages for enhancing the effectiveness of leverage in inducing democratization in authoritarian settings. Furthermore, the relevance of the relationship between leverage and linkage in determining the efficacy of transnational human rights pressure is discussed. It is stated that where linkage is extensive, the boomerang effect of transnational human rights networks is “stronger and broader in scope” (Levitsky & Way, 2006: 386).

### **2.2.2 Human rights consideration in aid allocation**

For a long time, aid was considered as charitable giving by rich states to poor ones. Factors such as recipient needs, donor interests, and recipient merits have consistently been raised in the literature to explain foreign aid allocation patterns. For higher levels of development impact, recipient needs and merits have been more effective than when donors allocate aid on the basis of selfish interests (Kilby & Dreher, 2010). Considered from the donors’ perspective, recipient needs often included the alleviation of the lack of resources in recipient countries, increasing the level of human development in terms of literacy, life expectancy, and so on. Scholars working on aid allocation soon started to question the belief that aid was simply “help for others” (Abbott, 1970: 1216). Early studies contrasting models of recipient needs with models of donor interests were those of McKinley and Little (1979) and Maizels and Nissanke (1984). Later, distinguishing between donor interests and recipient needs became common practice.

A key innovation in the aid allocation literature involves the introduction of recipient merits to reflect upon the quality of governance in recipient states. Aid is considered more effective in states with good economic and political environments (Burnside & Dollar, 2000). Although the level of respect for human rights is one aspect of recipient merit, scholars began considering its impact on aid allocation around the 1980s (Cingranelli & Pasquarello, 1985; Lebovic, 1988; McCormick & Mitchell, 1988; Poe, 1991, 1992). With the end of the Cold War, studies on Western aid's "democracy promotion" in recipient states, which included human rights promotion and protection, became mainstream. Most of these studies, however, focused on the US. This is understandable given the fact that the US was the largest aid provider in democracy assistance during that era (Wondwosen, 2013: 994). The findings of Poe (1992) and Abrams and Lewis (1993) show that the US's foreign aid program uses aid to reward nations for promoting human rights. Poe and Sirirangisi (1993) have stated that human rights abuse has been an important determinant of the US's aid to Africa, but recipient needs were somewhat outweighed by the former's strategic and political interests.

Focusing on the effectiveness of aid in promoting human rights, Regan (1995) has found that aid has no impact on improving the level of human rights in recipient states. In contrast, Dunning (2004) has found that aid to Africa has been effective in promoting human rights, but only in recent times. Zanger's (2000) analyses of multiple donors show that good governance (as in respect for human rights, democratic structure, and military spending) do not influence aid allocation. Lebovic and Voeten (2009) have asserted that influential donor states often coerce multilateral agencies to retract aid from recipients with high levels of human rights violations, but the same donors do not apply these aid sanctions bilaterally. Nielsen (2013) has argued that donors impose aid sanctions as a way of punishing repressive states but do so selectively on those with whom they do not have political ties. Likewise, Wondwosen has argued that democratic reversals and human rights abuses in recipient states can result in the reduction or cessation of aid "when the recipient states are neither economically nor strategically valuable to the Western donors"(2013: 993).

As shown above, the scholarship on the place of human rights on the aid allocation agenda is not consistent. The popular convention, however, seems to be that aid is effective when allocated to states with higher levels of democracy, good governance, and respect for human rights (Burnside

& Dollar, 2000; Svensson, 1999). According to Carey (2007: 450), respect for human rights has appeared repeatedly in the policy statements by OECD donors since the early 1990s. This, however, does not seem to hold in the case of aid to African states, where most of the top recipients lack genuine democratic institutions and demonstrate poor human rights practices. Early studies on aid to Africa strongly reject donors' claim that the aid was driven by humanitarian needs (Schraeder, Hook, & Taylor, 1998). Alden (2000) has argued that the US's policy in Africa in the post-colonial period, for instance, was characterized by "neglect." As Brown (2005) has noted, donors' self-interest in guiding their aid allocation in Africa persisted even after the end of the Cold War. Of course, this is supported by other findings, and hence calls for a deeper introspection of the particularities of the recipients to comprehend the rationales for donors' interest to invest more aid in them.

### ***Aid conditionality***

Efficient allocation should ultimately lead to the efficient utilization of aid. Hence, it is important to provide a brief overview of aid conditionality - the practice of attaching conditions with loans, debts, or development aid that donors use to attain the objectives of aid. While there is no consensus on the definition of conditionality, "the key element is the use of pressure, by the donor, in terms of threatening to terminate aid, or actually terminating or reducing it, if conditions are not met by the recipient" (Stokke, 1995: 11-12). Stokke (1995) has categorized aid conditionalities into first and second generations. Economic policy reforms, for instance, the conditions advanced by the Structural Adjustment Programs (SAPs), are categorized as a first-generation conditionality. SAPs constitute conditions that the Bretton Woods institutions, the International Monetary Fund (IMF) and the World Bank (WB), required to be fulfilled by borrowing states so as to be eligible to receive new loans or/and to decrease the interest rate on existing ones.

Policy reforms that the SAPs tried to implement include currency devaluation, deregulation, and privatization. Due to severe criticisms of these programs, which have been in effect since the 1980s, the WB and the IMF had to launch a new initiative, the Poverty Reduction Strategy Initiative, which aims to address the lack of the country ownership problem of the SAPs. This logic drives the contemporary aid effectiveness agenda that encourages the harmonization of

development aid with the priorities of recipient states. Hence, donors increasingly pool funds in multi-donor funds, as they do under the Development Assistance Group (DAG) in Ethiopia, to reduce transaction costs to “get more for their money.” The DAG is a donor consortium that is composed of 30 bilateral and multilateral donor governments and agencies that provide assistance to Ethiopia. It was established in 2001 as a mechanism for dialogue between donors and the Ethiopian government to harmonize the mobilization of aid with the state’s development priorities. With a pooled fund, the DAG coordinates members’ support in the implementation of national development plans (e.g., Growth and Transformation Plan [GTP] I and II). Its secretariat is hosted by the United Nations Development Programme’s (UNDP) Ethiopia country office.

Second-generation conditionalities, on the other hand, aim at political reforms, including human rights and democratic reforms. They are usually captured by the rubric term of “good governance” (Wondwosen, 2013). The two generations of conditionality often go hand in hand; reforms in the governing structure of recipient states are needed for economic reforms to be effective. Many, however, have pointed out that aid conditioned on political reforms is prone to be selectively invoked on recipient states that are poor, aid-dependent, and strategically insignificant to Western donors (Carothers, 1999; Crawford, 1997, 2001). Bratton and Walle (1997) have stated that conditionality has failed to even sustain the limited political reforms witnessed in sub-Saharan Africa in the early 1990s, let alone result in an actual transition to a democratic form of government. In her acclaimed book, *Dead Aid: Why Aid is Not Working and How There is a Better Way for Africa*, Moyo (2009) has argued that the aid conditionality regime resulted in undesired outcomes in Africa. Brown (2005) points to donors’ foreign policy interests, on top of other structural predicaments, as the cause of its ineffectiveness in the sub-Saharan African context. Briggs (2017) even questions foreign aid’s impact in alleviating extreme poverty, as his analysis shows that aid disproportionately flows to regions with the richest people and improves their lives. While some studies argue the opposite, their findings are context-bound. For instance, based on two cases in sub-Saharan Africa (Kenya and Malawi), Clinkenbeard (2004) has argued that aid conditionality can be effective in producing democratic reforms in aid-dependent recipient states, but only when incumbent regimes are pro-West and have the intent of being integrated into the global economy.

The conversation on the need and effectiveness of conditionality is at the center of the contemporary discourse on aid, in which recipient ownership is increasingly considered as an important determinant for the effective utilization of aid. At present, donors are moving away from the “highly conditioned mindset of the structural adjustment era” (Manning, 2008: 3). The international aid system is focusing more on helping recipients build their capacity to be able to effectively use the aid allocated. This entails the harmonization of aid with their development goals, which have been codified in different international guidelines. The trend, however, is criticized for neglecting governance-related issues that are equally significant for aid effectiveness (Kaufmann, 2009). Youngs has stated that while the EU poses as a strong promoter of democratic values, “some of the most generous European aid increases in recent years have gone to authoritarian or semi-autocratic governments” (2008: 2). Ethiopia, for instance, is one of the top aid recipients in Africa, and the world for that matter, despite being at the heart of international scrutiny for its poor human rights practices. It has been successful in limiting interference from its Western donors (Borchgrevink, 2008). This is remarkably unconventional for a poor state with a Growth Domestic Product (GDP) per capita of 549.85 (in constant 2010 USD),<sup>11</sup> and highly dependent on foreign aid, which accounts for a significant portion of its national budget (Alemu, 2009).

### **2.2.3 Electoral authoritarian regimes**

Not all regime transitions in the post-Cold War setting lead to democracy. Some transitions in former dictatorial states, for instance, gave rise to what Levitsky and Way (2010) have referred to as competitive authoritarianism. This is a regime type that combines the electoral component of democracy with an underlying authoritarian character. The scholarship in democratic studies, for long, suffered from a “democratizing bias.” It conceived of the post-Cold War regime transitions as predictably transitioning to democracy, which was often referred to as the “third wave of democratization” (Huntington, 1991). Soon, however, studies questioning the analytical lens used to study these transitioning regimes began to surface. Carothers (2002) has argued that, instead of transitioning to democracy, many post-Cold War regime transitions lead to a “political grey zone” (Carothers, 2002: 9) that is neither dictatorial nor headed towards

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<sup>11</sup> See at: <https://data.worldbank.org/indicator/NY.GDP.PCAP.KD>

democracy. Diamond (2002) refers to such regimes as electoral authoritarian, a pseudo-democratic arrangement where authoritarian regimes, pressured by international and domestic actors, try to imitate democratic features such as elections. He categorizes these regimes into competitive and hegemonic variants. His study aims to develop a model to analyze flawed or manipulated elections, or what he calls “transitional elections.”

Levitsky and Way (2010: 3) have called for a distinct conceptualization of competitive authoritarian regimes where elections are tainted by manipulation, unfair media access, abuse of state resources, and violence. By adding one more component to the “procedural minimum”<sup>12</sup> characterization of democracy - the existence of a reasonably level playing field between incumbents and oppositions, they argue that when the incumbent's manipulation of state resources and institutions is so intrinsic, the slope of the playing field would be unevenly skewed. Their addition tries to account for situations not captured by conventional democratic attributes, such as disproportionate access to the media and economic resources. However, the mere existence of such channels for the opposition to compete, although unfair, distinguishes competitive authoritarian regimes from purely authoritarian ones, which lack such an arrangement or elections are mainly used as an incumbent-legitimizing tool. Rooted in a logic that considers elections as an “institutional break” (Schedler, 2002: 103) from authoritarian rule in a path to democracy, Levitsky and Way's (2010) minimalist definition of full authoritarianism includes various types of authoritarian regimes, ranging from closed regimes without democratic institutions, even nominal ones, to hegemonic regimes with bogus democratic institutions and practices, including elections.

In hegemonic regimes, incumbents stand as candidates in elections “not to lose but to legitimate their continuity in office” (Schedler, 2002: 103). Elections are used as a mechanism of easing pressure for a regime change. To this end, such regimes use various manipulative techniques in articulating electoral safeguards to control the democratic uncertainty of elections or minimize the risk of defeat. These are what Schedler (2002) has referred to as “the menu of

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<sup>12</sup> This roughly includes four attributes: free, fair, and competitive elections; universal suffrage; protection of civil liberties, including freedom of speech, press, and association; and the absence of non-elected authorities or religious bodies.

manipulation.”<sup>13</sup> Though not the end in itself, he argues that such practice would hopefully create the path to an eventual institutionalization of electoral democracy. These regimes often use “nasty forms of negative campaigning” (Schedler, 2002: 109) and block alternative sources of information aiming to tint the image of the opposition and paint an ideal one for themselves. Levitsky and Way (2010: 7) write:

*In hegemonic regimes, elections are so marred by repression, candidate restrictions, and/or fraud that there is no uncertainty about their outcome. Much of the opposition is forced underground, and leading critics are often imprisoned or exiled.*

The situation in Ethiopia more clearly resonates with the features associated with hegemonic regimes than competitive authoritarian ones, in which there is a relatively broader political space for competition. Bach (2011) has argued that Ethiopia’s authoritarianism is rooted in its ideological orientation, which oscillates between revolutionary democracy and the procedural components of liberal democracy. Similarly, Clapham has stated that the current system of governance in Ethiopia is best described as “managed political order,” which “cannot be remotely described as democratic, in the liberal sense of the term” (2017: 77). Elections have been used to “fit with international standards” (Bach, 2011: 646). In other words, Ethiopia subscribes to the components of liberal democracy for legitimation purposes as the case for other hegemonic authoritarian regimes. The EPRDF government’s sense of “democracy” has its roots in Marxist-Leninist traditions, specifically Vladimir Lenin’s concept of “democratic centralism.” In *What Is to Be Done? Burning Questions of Our Movement*, a pamphlet published in 1902, Lenin argues that a social revolution of the working class must be led by a group of elites or a vanguard party. This vanguard party would enjoy a hegemonic monopoly of power and function on the principle of “democratic centralism” to avoid internal divisions. As it is being attempted in the contemporary international system, which is unreceptive of such ideologies, the Ethiopian version of revolutionary democracy portrays many ambiguities, to say the least. Kenya, however, the other

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<sup>13</sup> (1) electoral fraud - acts that involve bias in administering elections. (2) political repression - ranges of practices to curtail civil and political liberties. (3) manipulating the actor space – this is aimed at manufacturing the failure of the opposition via exclusion (usually by hand-tailored legal instruments to alienate/outlaw “unfriendly competitors” (Schedler, 2002: 106) and fragmentation. (4) manipulating rules of representation – the institutionalization of unfair electoral rules that give incumbents the upper hand in the translation of votes into seats in the legislature. (5) manipulating the issue space – the act of creating and/or manipulating societal cleavages to serve their political agenda. (6) unfair competition – unrestricted access to state resources and media.



case in the study, is described by Levitsky and Way (2010) as one of the 14 competitive authoritarian states in Africa. The remaining 13 are Benin, Botswana, Cameroon, Gabon, Ghana, Madagascar, Malawi, Mali, Mozambique, Senegal, Tanzania, Zambia, and Zimbabwe. As Diamond's (2002) "electoral authoritarianism" encompasses both competitive and hegemonic authoritarian states, the study adopts this designation to provide some scope and meaning to the outcome of interest in state behavior in both of the cases it analyzes.

Broadly speaking, the lack of a clear allegiance to a single ideological block and the practice of pragmatism are some of the major defining characteristics of the current authoritarian regimes. Krastev (2010: 18) has argued:

*The new authoritarian regimes' lack of any ideology also partly explains why the democratic world is reluctant to confront them. They do not seek to export their political models, and hence they are not threatening. The new authoritarian regimes do not want to transform the world or to impose their system on other countries. So the axis of conflict today is no longer the free world versus the world of authoritarianism - it is rather the free world versus the world of free riding.*

Based on its analysis on the cases of Russia, China, Iran, Venezuela, and Pakistan, Freedom House, Radio Free Europe/Radio Liberty, and Radio Free Asia (2009) argues that the new authoritarian regimes are more sophisticated than the classical ones with a toolbox of various ways to obstruct human rights and democratic development. These mostly include the use of restrictive legislation and the strategic use and control of popular discourse on conventional and social media platforms, as is the case in Ethiopia and Kenya. These states may, at times, advance a discourse that seems to have ideological roots, especially the earlier modern authoritarian states. But they usually do so for legitimation purposes. In his work that begins with a critic of modernization theory for its dichotomous understanding of regime types (democracy versus others) and missing a key ingredient for analysis, the role of Ideology, Soek-Fang (2006) stresses the legitimizing power of ideological discourse in the Asian context, where "legitimated authoritarianism" exists/ed. The analysis is based on Antonio Gramsci's theory of hegemony (1971), specifically on the role of consent and legitimacy. Here, we must note that contemporary authoritarian states often use such discourse when and if needed to advance certain policy objectives; pragmatism still prevails.

## 2.2.4 Civic space

The Office of the United Nations Higher Commissioner for Human Rights (OHCHR) defines the operating environment for civil society actors, or the civic space, as “the place civil society actors occupy within society; the environment and framework in which civil society operates; and the relationships among civil society actors, the state, private sector, and the general public” (2014: 5). International Center for Not-for-Profit Law (2018a: 7) defines civil society actors as “individuals and organizations acting collectively to advance their shared interests and/or the public good. Civil society lies outside of the family, the state, and the market, and embraces both organized structures and informal groupings of individuals”. These actors operate at all levels - local, national, regional and international - and include human rights defenders, human rights organizations, networks, social movements, community-based groups, faith-based groups, trade unions, professional associations, and so on (Office of the United Nations Higher Commissioner for Human Rights, 2014: 5).

The shrinking of the civic space has been a troubling global topic in recent years. In much of the developing world, CSOs are often viewed as “dangerous enemies” (Ottaway, 2005: 130). A look at the annual reports of the World Alliance for Citizen Participation (CIVICUS, 2015) on the status of civil society in the world is insightful. This space is under attack by governments that have begun using legislative and administrative obstacles to restrict or close the space altogether. According to OXFAM (2016), of the 136 restrictive laws introduced worldwide between 2012 and 2016, 29 were in sub-Saharan Africa, where the task of holding governments to account has become increasingly difficult. Dupuy, Ron, and Prakash (2015: 420) refer to this trend as the “anti-NGO global backlash,” as NGOs, both domestic and international, are the most visible actors in the civic space. States increasingly place tough regulatory oversight over NGOs to recover the “political ground ceded during the 1980s and 1990s” (2015: 420). In the last two decades, 39 of the world’s 153 low- and middle-income countries have adopted laws restricting the inflow of foreign aid to domestic NGOs (Dupuy, Ron, & Prakash, 2016). According to Maina Kiai, the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the world has passed the point of talking about the “shrinking” of the civic space because “that space is long gone” (Kiai, 2016).

CIVICUS (2015: 78) identifies four categories of attacks on the civic space: the introduction of laws that limit freedoms of assembly, association and expression; the tightening of registration requirements; restrictions on the receipt of funding from foreign sources, which is often accompanied by rhetoric that frames CSOs that receive such funding as agents of foreign powers; and verbal and physical attacks by state officials, which may escalate to detention, imprisonment, and assassination. Similarly, International Center for Not-for-Profit Law (2016) classifies the constraints used by states to shrink the civic space into four groups: the proposal and adoption of restrictive CSO laws; the proposal and adoption of anti-protest laws; the closure, de-registration and expulsion of CSOs; the adoption and manipulation of counter-terrorism laws and policies; and the adoption of laws and policies that restrict access to resources, particularly foreign funding. This publication further states that, between 2015 and 2016, “states have adopted 64 restrictive laws, regulations, and other initiatives; these initiatives spanned all major regions of the world.” Howell, Ishkanian, Obadare, Seckinelgin, and Glasius (2008) write that counter-terrorism measures that grow out of an ever-increasing concern for security serve as rationales for the crackdown on the civic space.

According to Nielsen (2013), when human rights violations are widely publicized, aid donors are prone to take robust measures in the form of negative incentives, such as aid sanctions (suspension of ongoing disbursements or refusal of future funding).<sup>14</sup> As the political cost of being associated with a repressive regime might be high in terms of compromising both international and domestic legitimacy, donors tend to take measures to ensure their citizens that their tax money is not used to support repression. This likelihood, however, is contingent on the extent to which the violations are communicated to the public by the media (see Van Belle, Rioux, & Potter, 2004). From practice, we are aware that international and domestic human rights NGOs and the media are the two prominent actors in transnational human rights networks. This fact is helpful in shedding some light on the motivation for authoritarian states to crack down on domestic civil society in general and human rights NGOs in particular and the independent media.

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<sup>14</sup> His findings show that countries that violate human rights are sanctioned under three circumstances. (1) when they do not have close political ties to aid donors, (2) when the violations have negative consequences for donors, and (3) when the violations are widely publicized to donors.

This act is the states' attempt to create an environment in which human rights violations are under- or un-reported.

## Chapter 3

# Theory-building with Process-tracing

### 3.1 The process-tracing methodological approach

The study uses process-tracing, an effective within-case methodological approach to establish causality. It is considered as “a powerful solution to the problems surrounding the discovery of causal relations” (Waldner, 2012: 66). In an endeavor to move beyond correlation, process-tracing investigates causal mechanisms that link a cause with an outcome. Its distinctive suitability to provide causal explanations for puzzling case studies is a well-documented fact in methodological discussions. In addition to the account given for causal complexity (George & Bennett, 2005: 207), by the very merit of the approach, such a research design considerably minimizes the validity threats frequently associated with qualitative methods. Not only in process-tracing studies, but also methodological approaches in any type of research must align with certain ontological and epistemological assumptions. This helps the different research processes be consistent with the overarching understanding of causation adopted by a study. It is, therefore, pertinent to state from the outset that this study follows a pluralist interpretation of methodology. This is an alternative to what is commonly referred to as the KKV approach, which seeks to have a singular or unifying methodological logic for all social science research, variance or case-based research designs alike.

KKV are the initials of the three authors of *Designing Social Inquiry: Scientific Inference in Qualitative Research* (King, Keohane, & Verba, 1994), a highly influential methodological book that attempts to transfer norms from covariation analysis into qualitative research. Works that are critical of this approach’s disregard for the distinctive features of qualitative research have led to the era of what Mahoney (2010) calls “a new methodology” in qualitative research, in which process-tracing methods have become one of the most prominent. This “new enthusiasm for qualitative methods” (Waldner, 2012: 66) displays the expiration of the perception whereby “case-study methods have traditionally been viewed as inferentially inferior to randomized experiments and statistical methods” (2012: 65). As a standalone research design, the logic process-tracing follows fundamentally differs from other methodological approaches that use covariation analysis

(George & Bennett, 2005: 207). It has its own ontological and epistemological foundations that view causality as a process rather than a manifestation of covariation between variables (Blatter & Haverland, 2014). Therefore, it follows what is popularly referred to as a "mechanistic" understanding of causality, where the focus is to unpack the black box between a cause and an outcome. This view goes beyond looking for a pattern in the regular association between variables. Hence, this study uses fitting terms, such as causal conditions (C) and outcomes (O), instead of dependent and independent variables.

The recent epistemological shift in social science research advocates for the identification of mechanisms (M) in a causal analysis (Gerring, 2007: 5). Causation between a C and an O used to be understood as if C, then O. But now, causal analysis often starts with if C, through M, then O. This increases the validity of within-case inferences about the intermediating processes that contribute to outcomes. Due to lack of synthetic consensus on the meaning and purpose of explanations through causal mechanisms, it is imperative to reflect on this study's standing point.<sup>15</sup> Disregarding the predominant trend in political science, in which causal mechanisms are either conceptualized in minimalist terms or as a chain of intervening variables or pathways, this study follows Beach and Pederson's (2013, 2016) definition. After all, "the value of process-tracing is critically linked to how we conceptualize causal mechanisms" (Waldner, 2012: 67). Thus, a mechanism is understood as a system consisting of different parts with "productive continuity," and each part is conceptualized in terms of entities/actors engaged in activities (Beach & Pederson, 2013: 133). Productive continuity captures what Waldner refers to as "concatenation" - "the state of being linked together, as in a chain or linked series" (2012: 68).

### **3.1.1 Theory-building process-tracing**

There is no single template for using process-tracing. It is thus pertinent to explicitly state the specific variant adopted by this study. This eases the conceptual and practical ambiguity surrounding its application, as its methodological foundations are still in development. In an attempt to provide a practical guide for its use, Beach and Pederson (2013) differentiate process-tracing into three variants: theory-testing, theory-building, and explaining-outcome. They argue that, as different research situations call for different variants, the categorization clears up the

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<sup>15</sup> See Mahoney (2003) for various definitions of causal mechanisms.

"murky methodological guidelines" (2013: 9) that have come with the common perception of process-tracing as a single method. Most of the literature treats all process-tracing studies, both case-centric and theory-centric, as singular. There are, however, some that state how the term is used to lump together various methods. Waldner (2012: 67), for instance, refers to it as a "composite method." Beach and Pederson (2013) argue that process-tracing involving the testing of the presence/absence and the functioning as theorized of a generalizable mechanism that had been deductively constructed (theory-testing) should not be considered the same as the one that traces case-specific processes that are peculiar to the case under investigation (explaining-outcome). Similarly, it should not be equated with the one that tries to build a theoretical mechanism based on empirical insights from a case (theory-building).

As stated in Chapter 1, the overall ambition of this study is theory-building, with the intention of furthering our understanding of the causal relationships of interest based on within-case evidence. Therefore, using the theory-building variant is the most logical methodological decision. According to Beach and Pederson (2013: 3):

*Theory-building process-tracing seeks to build a generalizable theoretical explanation from empirical evidence, inferring that a more general causal mechanism exists from the facts of a particular case.*

Theory-building process-tracing aims at building a middle-range theory. To do so, it starts with an analysis of an empirical material to identify a causal mechanism that links a cause with an outcome. This mechanism is expected to be present across a context-bound population of cases beyond the specific case under investigation. While the theory-testing variant also shares this theoretical ambition of tracing a generalizable causal mechanism, the underlying difference between the two rests on the precedence they provide for theory or empirical evidence. Theory-building process-tracing uses empirical evidence to theorize a causal mechanism by inferring that what is found in empirical material depicts the observable implications of the mechanism at work.

The order of the research process, however, is reversed in theory-testing process-tracing. Theory-testing process-tracing uses empirical evidence to test a theory about the presence or absence of a mechanism that is deductively hypothesized from existing knowledge. This enables theory-testing process-tracing to make within-case inferences about the functioning of the

different parts of the mechanism, or whether or not they functioned as expected; "[n]o claims can be made, however, about whether the mechanism was the only cause of the outcome" (Beach and Pederson, 2013: 3). Similarly, no claims can be made in theory-building process-tracing "that the detected causal mechanism is sufficient to explain the outcome" (2013: 16). However, this is not the case with the widely used third variant, explaining-outcome process-tracing, which aims to provide a minimally sufficient explanation for an outcome in a single case. While the purpose of this variant distinguishes it from theory-building process-tracing, the inductive nature of both variants has led to the common confusion of the two.

According to Derek Beach, the theory-building process-tracing variant is the least developed and applied.<sup>16</sup> Therefore, he suggests that scholars be more intuitive and imaginative in their formulation of a theory from empirical evidence to enhance its application in the future. He further equates this endeavor with "trial and error." In light of this gap for methodological contributions, the inductive approach used by this study to develop a context-bound theory of a mechanism, with a middle-range generalizability, has the potential to significantly optimize the variant's practical application. Previous studies that have tried to use a similar approach include Janis's (1982) theory of a mechanism that he refers to as Groupthink. The case of a historical fiasco, the Bay of Pigs, was the puzzle that led him to wonder "how could a bright, shrewd men like John F. Kennedy and his advisors be taken by the CIA's stupid, patchwork plan?" (Janis, 1982: vii). He used five case studies of historical fiascoes under five US administrations to study the impact of psychological processes in small groups on foreign policy decision-making. He used the Groupthink mechanism to link poor decision-making by a small group of policymakers to policy fiascoes.

### **3.2 Causal explanations**

By focusing on causally relevant attributes of the concepts, this section presents the conceptualization and observable manifestation of the C, the two parts of the M and the O.<sup>17</sup> In

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<sup>16</sup> Derek Beach, Lecture (Process Tracing Methodology II - Evidence and Empirical Testing in Practice), European Consortium for Political Research (ECPR) Summer School in Methods and Techniques, Central European University (CEU), Budapest, Hungary, 28 July - 13 August 2016.

<sup>17</sup> See Beach & Pederson (2016) for guidelines on concept structure for case studies in general and process-tracing studies in particular.



the part that conceptualizes the different parts of the M, entities/actors and their activities are written in bold. This depiction emanates from the way the study comprehends mechanisms – a system with different parts in which entities/actors engage in activities. Given the advice provided for the reversed order of research processes in theory-building process-tracing, observable manifestations should come first, followed by the conceptualization in the table below. However, the following presentation, which is easier to follow, is used instead.

	<b>Causal condition (C)</b>  <i>Transnational human rights pressure at critical political junctures</i>	<b>Mechanism (M)</b>		<b>Outcome (O)</b>  <i>Authoritarian entrenchment</i>
		<b>Part 1</b> <i>Counter-discourse and quiet diplomacy</i>	<b>Part 2</b> <i>Regulatory crackdown</i>	
<b>Conceptualization</b>	A concerted effort by transnational human rights advocacy networks, essentially encompassing international and domestic human rights NGOs, to put pressure on advocacy targets (target state and donors) at critical political junctures with the intention of effecting a positive human rights change.	<b>Target states</b> respond to the pressure by constructing <b>counter-discourse</b> while <b>donors</b> engage in <b>quiet diplomacy</b> .	<b>Target states</b> embark upon <b>regulatory crackdown</b> to shrink or close the civic space.	A relentless attempt to effectively institutionalize rule by law in an electoral authoritarian setting.

Observable manifestation	Transnational human rights advocacy networks use various strategies to put a stop to human rights violations in target states during critical political junctures. They issue reports, hold press conferences, write letters, organize rallies, lobby policy makers of target states and/or donors, and so on.	Target states construct a discourse that tries to discredit the credibility of transnational human rights advocacy networks and question their intentions. Donors, on the other hand, show less sensitivity to use their leverage to push target states to comply with international human rights norms.	Target states pass vaguely and broadly worded, and repressive, legal instruments to restrict or stop the activities of civil society actors (both individual activists and CSOs). This mainly takes the form of anti-terrorism laws, media laws, and civil society regulation laws.	Target states carry out legalized actions that are often accompanied by administrative predicaments to systematically criminalize and/or incapacitate civil society actors (both individual activists and CSOs).
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Table 2. Conceptualization and observable manifestation of the C, the two parts of the M, and the O.

### 3.2.1 Causal condition (C): transnational human rights pressure at critical political junctures

Given the high regard accredited to the specification of temporal contexts within which processes of interest play out in studies that use the process-tracing methodological approach, identifying a critical juncture is needed as a commencing point of the processes between a cause and an outcome. According to Falletti and Lynch, a critical juncture is “defined ex-post as the starting point of a path-dependent causal process that leads to the outcome of interest” (2009: 1155). Critical junctures are “relatively brief periods of momentous political, social, or economic upheaval” (Capoccia & Kelemen, 2007: 349) “during which there is a substantially heightened probability that agents’ choices will affect the outcome of interest” (2007: 348). Hence, the study uses critical political junctures to be able to trace the impact of transnational human rights pressure on state behavior in the cases under investigation. The 2005 and the 2007/8 political crises in Ethiopia and Kenya, respectively, are identified as critical political junctures that jump-started the processes of interest in the two cases.

Transnational human rights pressure at critical political junctures is conceptualized as a concerted effort by transnational human rights advocacy networks, essentially encompassing international

and domestic human rights NGOs, to put pressure on advocacy targets (target state and donors) at critical political junctures with the intention of effecting a positive human rights change. As explained in detail in Chapter 2, the network conception of transnational human rights advocacy is adopted to capture the domestic-international dynamics of a human rights pressure and in recognition of NGOs' role in this enterprise. The network conception of transnational human rights advocacy does not clearly distinguish the activities of domestic and international actors, which are considered to be a unified single entity (Burgerman, 1998). With information exchange at its core, the networking of these actors at the two levels is usually informal, and it does not advance a "sustained coordination of tactics" (Khagram et al., 2002: 7). To put a stop to human rights violations in target states during critical political junctures, transnational human rights advocacy networks use various strategies. They issue reports, hold press conferences, write letters, organize rallies, lobby policy makers of target states and/or donors, and so on.

### **3.2.2 Outcome (O): authoritarian entrenchment**

The unintended negative outcome of authoritarian entrenchment in state behavior is conceptualized as a relentless attempt to effectively institutionalize rule by law in an electoral authoritarian setting. The typical way of defining rule by law is through the comparison with the rule of law. While rule of law aims to use legal frameworks to limit states' power to infringe upon peoples' enjoyment of their basic rights, rule by law is rather the use of repressive legal instruments to restrict peoples' enjoyment of their basic rights. Enabled by their repressive legal instruments, electoral authoritarian target states carry out legalized actions that are often accompanied by administrative predicaments to systematically criminalize or incapacitate individual activists and CSOs that operate in the civic space. As a result, they try to create an environment in which domestic human rights NGOs are incapacitated; international human rights NGOs are banned; the number of independent media outlets decreases; and independent journalists and human rights activists self-censor, are incarcerated, and flee target states.

The word "entrenchment" is included to refer to the exacerbation of an authoritarian state behavior. The study does not claim exclusive causality between transnational human rights pressure at critical political junctures and authoritarian state behavior, which it recognizes to be an outcome of a conjunction of various factors beyond its scope. As explained in Chapter 2, the

concept of electoral authoritarian regimes is adopted. This is because both of the cases that the study uses to draw insights qualify to be classified as such. This regime type is a pseudo-democratic arrangement in which authoritarian regimes, pressured by international and domestic actors, try to portray some democratic features, such as elections (Diamond, 2002).

### **3.2.3 Mechanism (M)**

A schematically structured theory, either as an *ex-ante* or as *ex-post* of an empirical search, depending on the specific variant used, is an essential characteristic of the process-tracing methodological approach. In an attempt to answer the “how” research question, this section presents the mechanism that causally links the C and the O, arguing that, through a mechanism that has two parts with entities/actors engaged in activities, the pressure that transnational human rights advocacy networks put on advocacy targets (target state and donors) at the identified critical political junctures ultimately contributed to the unintended negative outcome of authoritarian entrenchment in state behavior. These parts are named counter-discourse and quiet diplomacy (taking place in conjunction) and regulatory crackdown. To establish a “productive continuity” (Beach & Pederson, 2013) between the two parts of the mechanism, narrating the causal story between the C and the O is useful. As shown in the table above, transnational human rights pressure at critical political junctures led to counter-discourse and quiet diplomacy, which in turn gave rise to the regulatory crackdown that ultimately contributed to the unintended negative outcome of authoritarian entrenchment in state behavior.

#### ***Part I: counter-discourse and quiet diplomacy***

Target states respond to transnational human rights pressure at critical political junctures by constructing a counter-discourse that tries to discredit the credibility of transnational human rights advocacy networks and question their intentions. The counter-discourse routinely critiques the sources from which network members draw evidence in support of their claims and frames their criticisms as a political attack under the pretext of human rights. Furthermore, the counter-discourse aims at legitimizing following legalized actions that are often accompanied by administrative predicaments. Donors, on the other hand, respond to the pressure by engaging in a quiet diplomacy. They show less sensitivity to use their leverage to push target states to comply with international human rights norms. For instance, they refuse to condition

development assistance to target states pending on improvements of human rights practices. In other words, they refrain from threatening to withhold or suspend aid.

## ***Part 2: regulatory crackdown***

Beyond engaging in a hardline counter-discourse against transnational human rights advocacy networks, target states embark upon a regulatory crackdown to shrink or close the civic space. To this end, target states pass vaguely and broadly worded, and repressive, legal instruments to restrict or stop the activities of civil society actors (both individual activists and CSOs). This mainly takes the form of anti-terrorism laws, media laws, and civil society regulation laws.

### **3.2.4 Strategic importance: an aggregation of contextual factors**

The specification of contextual factors, or scope conditions, in which causal process plays out has been a widespread practice in both theory-centric and case-centric social research for some time. To clearly capture the causal impact of a mechanism, an account must be given of the contexts in which it is embedded (Hedström & Ylikoski, 2010). These are defined as “the relevant aspects of a setting (analytical, temporal, spatial, or institutional) in which a set of initial conditions leads to an outcome of a defined scope and meaning via a specified causal mechanism or set of causal mechanisms” (Falleti & Lynch, 2009: 1152). A context is not considered a causal agent on its own but as a condition that affects how a causal condition, or a mechanism, contributes to an outcome. To this end, and with the aim of shedding light on why the processes of interest played out the way they did in the cases under investigation, an analysis of the contextual factors that have a conditioning impact on the workings of the two parts of the mechanism, and hence the outcome, is conducted. The study aggregates these various, and often interlinked, systemic and case-specific contextual factors and refers to them as strategic importance. Those that are analytically relevant to the objective of the study are accounted for.

<b>Analytically relevant contextual factors</b>	<b>Systemic contextual factors</b> (international and regional level-of-analysis)	<b>Case-specific contextual factors</b> (domestic level-of-analysis)
	<ul style="list-style-type: none"> <li>▪ <i>Alternative powers and the “new scramble” for Africa</i></li> <li>▪ <i>“Security complex” and the war on terror in the Horn of Africa (HOA)</i></li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Political capital</i></li> <li>▪ <i>Economic progress and potential</i></li> </ul>

Table 3. Systemic and case-specific contextual factors.

### **Observable manifestations**

#### *Alternative powers and the “new scramble” for Africa*

With the emergence of alternative global powers such as China, aid recipient states are provided with some policy space to maneuver the terms and outcomes of their engagements with donors. The fact that the alternative powers have a different approach to development cooperation from the traditional/Western donors limits Western donors’ leverage. Because the aid conditionality that they may attach pending on improvements of human rights practices, or the robust measures that they may threaten to take, such as suspension of aid or the severance of diplomatic relations, can be counterbalanced by the alternative powers.

#### *“Security complex” and the war on terror in the HOA*

Given the multifaceted security concerns, the international community advances a policy of avoiding state collapse in the HOA region. Hence, the human rights agenda is not a priority, especially with regards to states that are considered to be the “oasis of stability” in an otherwise “politically unstable,” “volatile,” and “conflict-ridden” region. The security complex intensifies in the context of the war on terror, where the order of the day seems to favor outsourcing the task to regional powers.

#### *Political capital*

As maintaining partnerships with states that have high esteem among their peers is often considered a valuable asset for diplomatic alliances in intergovernmental platforms, the lower

sensitivity of donors to check human rights situations in Ethiopia and Kenya is conditioned by their influential standing in regional and continental affairs.

### *Economic progress and potential*

The economies of Ethiopia and Kenya are the top-performing ones in Africa. This fact, in addition to their possession of untapped natural and human resources, underscores their potential to be viable development partners in donors' eyes, which explains their reluctance to use their leverage in pressuring these states to comply with international human rights norms.

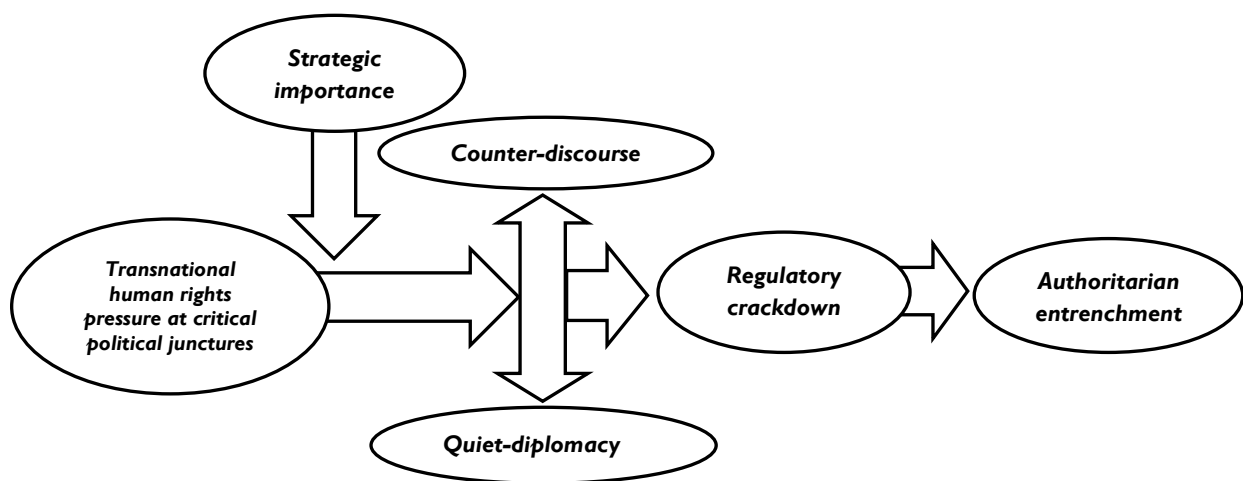


Figure 4. Schematic summary of causal explanations.

## **3.3 The search for empirical evidence**

### **3.3.1 Case selection and the research process**

The different research processes in this study were not linear/sequential in the sense that the research design, data-collection, and data-analysis have not chronologically followed one another. As is the case for most qualitative studies, especially for the ones that aim at theory-building, there was a constant back-and-forth in the process. This is mostly due to the inductive nature of the research endeavor that was born out of the puzzle - the case of Ethiopia and the regional domino effect it has had (see section 2.1 in Chapter 2). First, the study outlined the two parts of the mechanism that causally link the transnational human rights pressure at the identified critical political juncture and the unintended negative outcome of authoritarian entrenchment in the

behavior of the Ethiopian state. Then, it tried to see if the insights gained from the Ethiopian case can be used to provide an explanation for other cases within a similar context. A case selection strategy that took into account a multitude of methodological as well as contextual factors was used to select the case of Kenya. Methodologically speaking, the case selection strategy of most process-tracing studies focuses on the similarity of cases in causally relevant conditions. This purposive case selection, among other aspects, considers the presence of the C and the O and the similarity of cases in analytically relevant aspects of contextual factors.

The study argues that the C and the O are also present in the case of Kenya. Transnational human rights advocacy networks pressured target actors during a critical juncture of interest - the 2007/8 political crisis, and the following developments, such as the ICC proceedings. With regards to the O, there is a relentless attempt to effectively institutionalize rule by law. The Kenyan state is engaged in legalized actions that are often accompanied by administrative predicaments to shrink the civic space. Kenya follows in the footsteps of Ethiopia, participating in the regional trend of authoritarian entrenchment. Furthermore, the case of Kenya fits within the range of the contextual factors identified for the Ethiopian case. Besides methodological rationales, Kenya conforms to the conventional characteristics of a vulnerable target state. While it might not be as vulnerable as Ethiopia in the material dimension<sup>18</sup>, it is quite vulnerable in the social dimension. It is a state that seems to care about its international legitimacy, and it is a party to many of the core international human rights instruments.<sup>19</sup> Moreover, its constitution is the most progressive in Africa and has its own chapter (4) for the bill of rights. All of the above-mentioned considerations suffice to establish the causal homogeneity needed in the two cases.

Adding another case study to examine the explanatory relevance of the insights drawn from the case study of Ethiopia upgrades the study from one that provides an explanation for a puzzle to

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<sup>18</sup>After the recalculation of its GDP in 2014 with updated data from the better performing sectors - agricultural, manufacturing, telecommunication, and real estate, Kenya has become a middle income economy. Foreign aid only represented 16 percent of the government's total budget in 2013/14. Even still, it ranks ninth among the top 10 ODA recipients from DAC members (OECD – DAC, 2017). Furthermore, it is very much dependent on non-budgetary aid in the area of security and justice, for instance.

<sup>19</sup> Kenya has ratified the ICCPR, the ICESCR, the ICERD, the CEDAW, the CRC, and the CRPD. It has also ratified regional treaties such as the African Charter on Human and Peoples' Rights, African Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, and Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.



one that offers a context-bound theory of a mechanism with a middle-range generalizability. This can help show why and how transnational human rights pressure defeats its very purpose of effecting a positive human rights change, even when applied to target states that are seemingly vulnerable. As this entails a detailed within-case analysis, it would not have been manageable to have additional case studies. As with the Ethiopian case, a critical political juncture - the 2007/8 political crisis in Kenya, is identified to analyze the impact of the pressure applied by transnational human rights advocacy networks on state behavior. To this end, broad and diverse within-case “mechanistic evidence” (Beach & Pederson, 2016), or what Brady and Collier (2004) have referred to as “causal-process observations” about the processes contributing to the outcome of interest, are used in triangulation.<sup>20</sup> For better organization, the analysis of those processes in the two cases is presented together thematically throughout the dissertation.

Last, an explanation to justify the choice of the phrase “the Horn and East Africa” in the title is presented in the following. A minimal geographical understanding of the HOA notes that it comprises four states in the north-eastern tip of the African continent, namely Djibouti, Eritrea, Ethiopia, and Somalia. The Greater HOA, however, adds the other members of the Intergovernmental Authority on Development (IGAD)<sup>21</sup> (South Sudan, Sudan, Kenya, and Uganda) to the list. Similarly, an ambiguity in clearly delineating the states that constitute East/Eastern Africa exists due to the overlapping membership of the states in various regional organizations. Generally, membership in the East African Community (EAC) is considered a marker of the states that belong in the region. The EAC is an intergovernmental regional organization composed of Burundi, Kenya, Rwanda, South Sudan, Tanzania, and Uganda. As this study bases its analysis on the cases of Ethiopia and Kenya, it is imperative to delineate a geographic scope that would encompass both cases. Using the term “the Greater HOA” would have done so, but again there is no consensus on the states that compose it. Thus the reference to the Horn and East Africa is used as a geographic marker for the part of the world from which this study draws insights.

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<sup>20</sup> Causal-process observations are information, mostly qualitative in nature, about the processes that substantiate causal claims.

<sup>21</sup> IGAD is a regional organization that aims at assisting its member states in their efforts to achieve food security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs; and economic cooperation and integration.

### 3.3.2 Data-collection and sampling

Different primary and secondary sources of empirical observation are used to gather evidence. Here, the term observation means raw empirical data, which is turned into evidence after a proper evaluation of its content and accuracy (Beach & Pederson, 2013: 120). For instance, “account evidence” can be gathered from both secondary sources (e.g., newspapers) and primary sources (e.g., interviews) (Beach & Pederson, 2013: 123). Attributable to the deterministic approach to explanations in studies that use the process-tracing methodological approach<sup>22</sup>, rich data is required to provide a comprehensive explanation of the processes between a causal condition and an outcome. Hence, both field and archival research strategies were employed.

Conducting field research in Addis Ababa, Ethiopia, and Nairobi, Kenya, was more of a necessity than a choice. For one, as the study presents a line of reasoning contrary to the established convention in the scholarship, it has to depend on primary data uncovered by data collection tools such as interviews with experts and the analysis of documents. Second, with cases such as Ethiopia, where human rights issues have already attained a taboo-like status, there is a scarcity of scholarly literature on the subject. Thus, semi-structured expert interviews were conducted. As it blends the characteristics of unstructured and structured interviews, a semi-structured interview template provides enough room to probe follow-up questions while avoiding the risk of detouring from the relevant issues of interest (King & Horrocks, 2010). Furthermore, the study draws evidence from secondary sources such as books, journal articles, working papers, media sources, and so on.

Purposive and snowball/chain-referral sampling techniques, both non-probability sampling approaches, were used to select the subjects for the semi-structured interviews. Purposive sampling refers to a deliberate selection of interview subjects in light of prior knowledge and the objective of the study. Snowball/chain-referral sampling, meanwhile, is a technique in which the researcher requests the suggestion or recommendation of other (potential) interview subjects from the initially identified ones. These techniques’ merit in minimizing the risk of excluding key interview subjects is the rationale behind Tansey’s (2007) advice for the use of non-probability

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<sup>22</sup> Whether causality should be understood in deterministic or probabilistic term is a major ontological discussion in the philosophy of science. In short, ontological determinism implies that “given a set of initial and scope conditions, an outcome was bound to occur” (Waldner, 2012: 69).

sampling approaches in process-tracing studies. Additionally, as the major aim of the study is building a context-bound theory with middle-range generalizability rather than making law-like generalizations, the sampling of interview subjects need not be based on the logic of randomness.

Similar to most qualitative studies, the major consideration taken into account for sampling the interview subjects was diversity. The study selected experts with varying positions with regards to the research agenda to account for different stakeholders' positions. For instance, by considering a political position as a dimension that can capture diversity, it included the positions of both state officials and elites from the opposition. This practice, which is considered to be a triangulation technique by itself, increases the reliability of interview observations as sources of evidence.

### **3.3.3 Field research: some observations**

Three rounds of field research and 60 semi-structured expert interviews were conducted. The two rounds of field research (January/February 2016 and September 2016) took place in Addis Ababa, Ethiopia, while the third (October/November 2017) was in Nairobi, Kenya. Of the total 60 interviews, 50 were in-person interviews conducted during the field research, and the remaining 10 were conducted over Skype or phone. All interviews, both in-person and otherwise, were conducted between January 2016 and March 2018. The experts for the semi-structured interviews were mainly civil society actors, including representatives of international and domestic human rights NGOs, human rights activists, journalists, opposition personalities, political and legal analysts, academics and other stakeholders. Moreover, state officials from concerned ministries and departments and representatives of the donor community were also interviewed.

Interview information	Numbers
In-person interviews in Addis Ababa, Ethiopia	21
In-person interviews in Nairobi, Kenya	29
Total in-person interviews	50
Skype/phone interviews	10
Total interviews	60

Table 4. Summary of interview information.

With regards to the field research in Ethiopia, conducting interviews with officials from the country's top aid donors, such as the United States Agency for International Development (USAID), the Department for International Development (DFID), and the WB, was one of the planned empirical activities. However, the selected individuals in all the three agencies declined consent for the interviews; the promise of confidentiality and the anonymized use of interview information failed to change their minds. In an email response, a senior official at USAID Ethiopia stated that the topic of human rights considerations in the context of aid allocation is "too sensitive" to be associated with, especially at that point in time. The field research in January/February 2016 coincided with the height of the *Oromo protests* that began in mid-April 2014 with the government's announcement to implement the Addis Ababa Integrated Regional Development Plan. The plan proposed the expansion of facilities to areas in the outskirts of the city lying within the Oromia Regional State. This was followed by the government's crackdown, which included extrajudicial killings and arbitrary arrests. The mishandling of the situation, especially the one that resulted in a stampede that took the lives of many at the *Ireecha* festival, led HRW to refer to 2016 as the "year of brutality" (Human Rights Watch, 2017). Following the widespread political protests, a state of emergency was declared that authorized the military to enforce security nationwide in October 2016. The state of emergency enacted sweeping, vaguely worded restrictions on a broad range of activities. It denied freedom of expression, association, and assembly, and access to information, among many other aspects. It also legitimized many of the security force's abusive practices, such as arbitrary detention, and restricted the *habeas corpus* rights of the detained. While the state of emergency was officially withdrawn in August 2017, it

was reinstated in February 2018 to again be withdrawn in June 2018. This condition considerably exacerbated the climate of fear and explains the refusal of the selected individuals from USAID, DIFID, and the WB to participate in interviews. In light of this, officials from the DAG and the EU were interviewed to account for the views of the donor community.

Instead of a setback, the above-mentioned challenge is considered supporting evidence for the arguments of the study. An extensive climate of fear exists in which people are terrified to talk about issues even remotely related to human rights, and this is particularly apparent when approaching actors in the civic space. Self-censorship by civil society actors, especially those that work on governance-related issues, including human rights, is rampant. Given the astutely crafted legal instruments that can easily incriminate individuals for exercising their seemingly legitimate rights to freedom of expression, association, and assembly, this is understandable. In order to address this concern, a consent form was prepared for interview subjects who would prefer confidentiality and the anonymized use of interview information in publications and presentations that would arise from the study. Those who requested anonymity were asked if they had a preferred designation to refer to them; some made suggestions such as "human rights worker," while the rest did not show specific preferences. This proposition was, however, not presented for interview subjects who agreed for their identities to be revealed. As expected, most of the interview subjects in Addis Ababa asked for anonymity. The identities of 15 of the 21 interview subjects from the in-person interviews in Addis Ababa are anonymized throughout the dissertation.

To show the deeply entrenched climate of fear in Ethiopia, the case of two interview subjects who requested anonymity is therefore presented. International Human Rights Worker 1<sup>23</sup> and 2<sup>24</sup> are the designations used to refer to them throughout the dissertation. International Human Rights Worker 1 refused recording his voice, fearing the possibility that the information he provided would reach the eyes and ears of those in power and used against him. Similarly, International Human Rights Worker 2 said, "They wouldn't say this in public but I have been privately warned that if I go [to Ethiopia], I would not be able to come back." In a stark contrast with the field research experience in Ethiopia, the interview subjects in neighboring Kenya were

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<sup>23</sup> In-person interview, January 2016, Addis Ababa, Ethiopia.

<sup>24</sup> Skype interview, September 2017.

quite open to discussing the issues of interest and beyond. Only 1 interview subject out of out of the 29 in-person interviews in Nairobi requested confidentiality and the anonymized use of interview information.

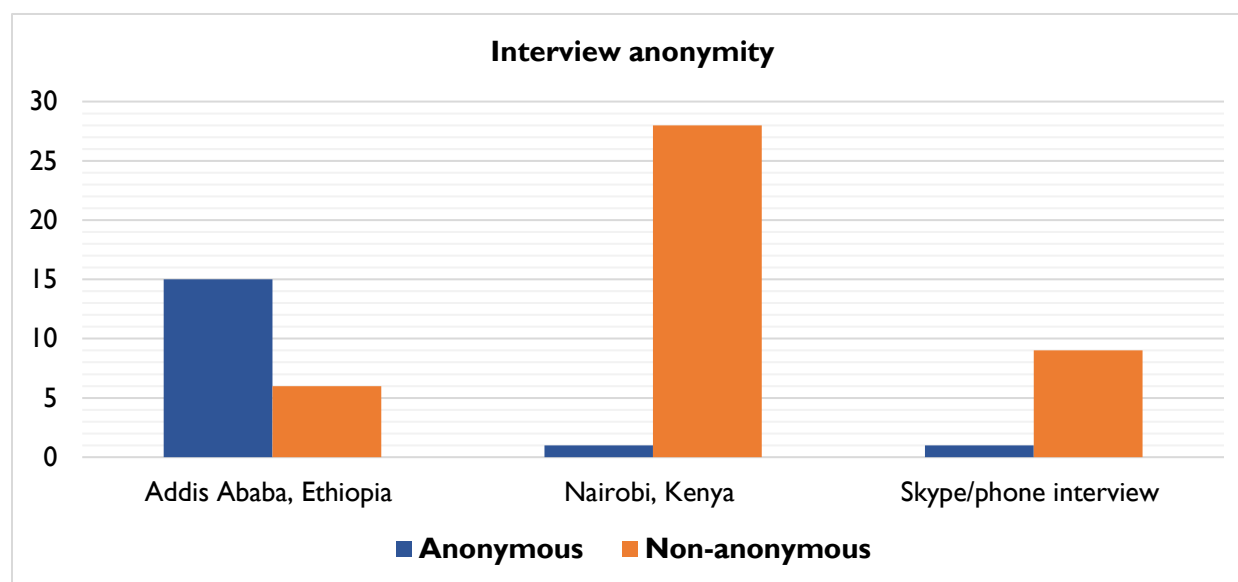


Figure 5. Anonymity of interview subjects.

The dissimilarity in the exercise of freedom of expression in the two cases is nothing short of astonishing. Compared to Ethiopia, where information blackout seems to be effectively institutionalized, there is extended media freedom in Kenya. Kenya scores 58 out of 100 (on a scale of 0 = most free, 100 = least free) on Freedom House's (2017a) *Freedom of the Press 2017: Press Freedom Dark Horizon* report. This gives it the net freedom status of "partly free," while Ethiopia has the net freedom status of "not free," as it scores 86 out of 100. While the report mentions the government's growing intolerance of an independent media and its legalized attempts to limit the space needed for its proper functioning, it acknowledges that the media in Kenya can still perform critical reporting. This is in direct contrast to how the report describes the situation in Ethiopia: "Ethiopia's media environment is one of the most restrictive in sub-Saharan Africa." The above statement, however, should be interpreted in relative terms. The media freedom in Kenya is still questionable by international standards and even considered to be under "unprecedented attack" (International Center for Not-for-Profit Law, 2018d). The Kenya Communications Authority's decision to shut down three television stations while they

broadcasted the swearing-in ceremony of Raila Odinga, the opposition leader, as “the people’s President” on 30 January 2018 is a case in point.

Three research challenges are worth mentioning with regards to the field research in Nairobi, Kenya. The first was the coincidence of the field research with the October 2017 re-run of the National Election. The Kenyan Supreme Court had nullified the previous election in August 2017 on grounds of electoral irregularities, the first ruling of its kind on the African continent. There were many uncertainties surrounding the legitimacy of the re-run election, if not the legality, as the opposition had boycotted it. Given the looming possibility of political violence, personal safety was a major concern at the time. The second research challenge was gaining access to interview subjects as a foreign researcher in a state undergoing a different critical political juncture than the one being studied. Hence, I had to use my personal network to arrange meet-ups with potential interview subjects, at least for the first few. Then, the snowball/chain-referral sampling technique was used to select the remaining interview subjects. The third research challenge was the time-consuming administrative procedures to access state officials for an interview. This was experienced to a degree incomparable with the field research in Ethiopia. The state officials in Ethiopia were relatively willing to participate in interviews; they saw it as an opportunity to tell their side of the story. Their counterparts in Kenya, however, used various procedures to avoid the interviews. One senior official at Kenya’s Ministry of Finance said, “As a political scientist, you should know that bureaucracy is a necessary evil.” This statement was made to justify his decision to consult his colleagues before signing a permit that would allow an expert from the department that he leads to become an interview subject for the study.

The last, but certainly not the least, field research observation is the gender dimension of the interview sample. Of the total 60 interview subjects, women constitute only 12; 10 were interviewed in-person during the field research in Addis Ababa and Nairobi, and the remaining 2 were interviewed over the phone. One similar trend among all the women interview subjects was the fact that they all talked less than their male counterparts.

## **Chapter 4**

### **Connecting the Dots:**

# **Transnational Human Rights Pressure at Critical Political Junctures and Authoritarian Entrenchment**

This chapter presents the association between transnational human rights pressure at critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior. Connecting the dots between the causal condition and the outcome is important to set the scene for the discussion in the following chapter of the two parts of the mechanism that causally link the two. This study argues that the pressure that transnational human rights advocacy networks applied to target actors (the target states and donors) during the 2005 and 2007/8 political crises in Ethiopia and Kenya, respectively, contributed to a relentless attempt to effectively institutionalize rule by law. Transnational human rights advocacy networks, especially domestic CSOs and individual activists, who played an active role in applying pressure during the identified critical political junctures were made victims of the subsequent legal and administrative retributions. In the case of Ethiopia, they were considered to have provided sympathy and support to the opposition political parties, while those who asked for accountability for the 2007/8 post-election violence are targeted in Kenya.

The 2005 political crisis in Ethiopia is presented in the following. The overview of the political crisis is followed by an analysis that connects the dots between the pressure placed on advocacy targets during this critical political juncture and the unintended negative outcome of authoritarian entrenchment in state behavior. This is followed by a similar discussion of the 2007/8 political crisis in Kenya. Finally, the chapter concludes with a discussion on some contrasts in otherwise similar trends across the two cases.



## **4.1 The 2005 political crises in Ethiopia: the pressure on advocacy targets and its impact**

The political crises that followed the May 2005 national elections had a massive repercussion in shaping the dynamics of the relationship between the state and civil society in Ethiopia. Wondwosen (2009: 1602) has written, “though the relationship between the ruling EPRDF party and the civil society from 1991 to 2005 was not smooth, it reached a freezing point during the 2005 elections.” This was the first time that the civil society played a decisive role in the democratization process in the country, he argued. Of all the contributions made by the civil society to the electoral process at the time, providing voter education to the public and conducting election observation were the major ones. Furthermore, the effective reporting of the unfortunate incidents, both during the lead-up to the election and in its aftermath, exacerbated the already existing revulsion of the government towards the then-vibrant, in relative terms, domestic CSOs. This became apparent when the government began referring to them as “the opposition in disguise” (Human Rights Council, 2011: 3). Beyond engaging in a hardline counter-discourse that often bordered name-calling, this build-up explains the consequent crafting of a regulatory framework hostile to their survival.

The EPRDF coalition-run government in Ethiopia astutely structured its legal landscape to no longer make it convenient to monitor, document, and report on its human rights practices. As noted in Chapter 2, the CSP, which was passed into law in 2009, is a case in point. The CSP incapacitated domestic CSOs via provisions that invite undue government interference and the imposition of severe funding restriction. Yacob Hailemariam, Ph.D., retired professor of law at Norfolk State University and the former senior prosecutor for the ICC for Rwanda, referred to Ethiopia as “a police state” in which people are arrested arbitrarily and made to survive by the will of the government.<sup>25</sup> The constitution, he said, especially the provisions that deal with human rights, has been roundly violated. Similarly, an independent journalist who wishes to remain anonymous, and who is hereafter referred to as Journalist, shared his views on what he considered “a progressive increase in the legal violation of human rights” in Ethiopia.<sup>26</sup> The

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<sup>25</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>26</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

following excerpt from the interview with an academic and legal practitioner who wishes to remain anonymous, and who is hereafter referred to as Academic and Legal Practitioner, summarizes the above-discussed points.<sup>27</sup>

*The EPRDF is a pro in the practice of rule by law. Its laws are exclusionary. [...] What the laws seem to have in common is the fact that they criminalize acts that the government does not like. The state literally uses laws for oppression, and punishments are often disproportionately high. [...] The scope of the criminal law expanded so much so that there is almost nothing that can be considered not to be criminal. If they do not like you, they will tailor a criminal law for you.*

#### 4.1.1 The political crisis

Although the human rights situation in Ethiopia has been in the spotlight of international scrutiny for some time, reports that portray a worsening situation increased after the 2005 political crises. Aalen and Tronvoll (2009) contend that the 2005 elections ultimately moved Ethiopia towards authoritarianism. In the figure down below, the Polity IV scale shows that 2005 marks the year when Ethiopia's Polity2 scores dropped from 1 to -3, where it has remained through the present. This indicates a shift towards more autocratic tendencies by the EPRDF coalition, which has been in power since 1991.



Figure 6. Ethiopia's Polity scores (1995-2017).<sup>28</sup>

<sup>27</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>28</sup> Note: based on data from Polity IV Project, which captures political regime characteristics on a 21-point scale ranging from -10 (hereditary monarchy) to +10 (consolidated democracy). Source: Centre for Systematic Peace (2017).

The run-up to the elections witnessed what seemed to be an open political competition that was unprecedented in Ethiopia's long history. To mention some of such indicators, the opposition parties were allowed to debate the ruling coalition on issues in discussion forums, and they were given air-time to campaign in the state-owned media outlets. Soon after, however, a disheartening reality brought a shock to those who had waited for the electoral outcome with great optimism. After the disputed election win of the EPRDF was announced, dissatisfied citizens showed their anger by staging a demonstration in the streets, in which the police responded with live ammunitions. A Parliamentary Commission of Inquiry, which was established in December 2005, reported the deaths of 193 civilians and six members of the security forces. Following the report, which exposed the use of excessive force by the security forces, some members of the Commission, including the Chair and the Deputy, fled the country "citing political intimidation and harassment by the ruling party" (Smith, 2009: 876).

Besides the post-election violence that ultimately claimed the lives of civilian demonstrators close to a couple of hundreds, the election process itself was highly disputed (Ishiyama, 2007). The National Electoral Board of Ethiopia tried to ban domestic CSOs from election observation, claiming that they were overstepping their mandates, and it took into account the government's accusation that the CSOs were acting in support of the opposition (Wondwosen, 2009: 1602-1603). The CSOs challenged the decision in court and managed to have it overruled. As the Court's decision came too late, most of the CSOs were not able to mobilize and act in time. In an interview with the *Voice of America* in 2005, Ana Gomes, the head of EU's observation mission, one of the few international observers allowed to observe the elections, stated that the elections did not meet international standards. She has said, "We have a ruling class which is very smart in using politically correct rhetoric pretending that they want democracy, but judging from the actions that are documented in the report [by EU's observation mission], that is not happening" (VOA, 2010).

"Politically motivated" detention and then trial of opposition party leaders, journalists and human rights defenders followed the political crisis. This has been the major subject of reporting by international members of transnational human rights advocacy networks such as AI and HRW. The detainees were accused of treason, outrage against the constitution, and other capital charges for allegedly inciting the post-election street demonstrations. While the most prominent civil

society leaders were later acquitted of the charge of committing outrage against the constitution, which would have resulted in a sentence of life imprisonment or death, they were still accused of attempting to unconstitutionally seize power through street violence. AI considered most of the detainees to be prisoners of conscience who exercised peaceful dissent using their legitimate rights to freedom of expression, association, and assembly. It thus advocated for their immediate and unconditional release.

With regards to the detainees for which the government had incriminating evidence, particularly concerning their involvement in violence, AI urged for them to be charged with a recognizable criminal offence and to be given a fair and prompt trial or otherwise be released. Unfortunately, this activity was banned in July 2007. AI produced several reports with thorough analyses of the trials in addition to its occasional press statements. Moreover, it reported on the pardon process, which took place separately from the formal legal procedures. Amnesty International (2011a) has provided a detailed explanation about the pardon process that contains both the Amharic and English versions of the letter sent to the then-Prime Minister by the detainees attesting to, and apologizing for, their “mistakes.” Similarly, HRW closely monitored and reported on the facts and the fates of the detainees. Cases in which detainees were forced under duress to make self-incriminating confessions were reported.

Domestic human rights NGOs were also active in the lead-up and during the election. They organized discussion forums, provided voter education to the public, and deployed election observers to monitor the electoral process. The same is true for the post-election period. They extensively criticized and reported on the post-election violence, where the government security used excessive force on civilian demonstrators who were protesting against an alleged electoral fraud, and the followed “politically motivated” trials of opposition leaders, journalists, and human rights defenders.

A report produced by the Government Communications Affairs Office (GCAO) (2015: 35) referred to what happened in 2005 as “the first crisis that put to test the durability of the federal constitutional system.” Similarly, a human rights lawyer who wishes to remain anonymous, and who is hereafter referred to as Human rights lawyer I, said, “2005 changed everything, including

the country's profile and the public's mind-set.”<sup>29</sup> Mesfin Woldemariam, Ph.D., retired professor of geography and philosophy at Addis Ababa University, explained how the crises changed the regime's attitude, including its sensitivity to the opinion of the international community.<sup>30</sup> He said, “They are no longer sensitive” and commenced an open defiance of international human rights norms. He then explained how the political crisis further pushed the regime away from liberal ideals such as the freedom of the press and the need for an active civil society. In addition to harassing domestic CSOs and individuals that the government sees as threats, he said it also tries to alarm the international community with a discourse that aims at institutionalizing a perpetual fear. The regime claims that the world would be in danger without its “anti-terrorism crusade” in the HOA region, he added.

Journalist I took a broader perspective and discussed “the legal tampering” with the meaning and substance of normative concepts such as human rights after the 2005 political crisis. He said that the moral demarcation of what is good and bad has been re-visited; some rights that used to be considered human rights are no longer treated as such. He mentioned the right to protest, the right to privacy, the rights of people in custody, and others as examples. The laws passed after the year 2005 often have provisions that go against the constitution, the ultimate law of the land, which declares that other laws or customary practices that are in direct contravention to it would be nullified, which is sadly not the case, he said. Similarly, Jon Abbinik, Ph.D., professor of politics and governance in Africa at Leiden University, mentioned how public demonstration is “re-defined” as an act that is undesirable and predictably violent.<sup>31</sup>

Some of the advocacy strategies used by transnational human rights advocacy networks at the time of the crisis were not well received by the EPRDF government. For instance, the application of leverage politics was considered to have contributed to the temporary tension between the government and its major donors. Even the donor community acknowledges how pertinent the 2005 political crisis was in re/defining their relationship with the Ethiopian government. Reproaching the use of lethal force against civilian demonstrators, multilateral and bilateral Western donors such as the EU, the WB, the UK, the Netherlands, and Sweden suspended direct

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<sup>29</sup> In-person interview, September 2016, Addis Ababa, Ethiopia.

<sup>30</sup> In-person interview, February 2016, Hawassa, Ethiopia.

<sup>31</sup> Skype interview, October 2017.

financial assistance to the federal government of Ethiopia (Human Rights Watch, 2010a; Youngs 2008: 8). A senior official at the EU Delegation to Ethiopia who wishes to remain anonymous, and who is hereafter referred to as Senior Official at the EU Delegation to Ethiopia, stated:

*The EU and the rest of the donor community, including EU member states, changed the mechanisms of their support to Ethiopia as a direct result of the activities during the election. I would say the situation is not yet back to where it would have been in 2003, for instance. So there is a continuing effect from 2005, which reflects our position on democracy and human rights in Ethiopia.*<sup>32</sup>

The seized funds, however, were soon resumed through local administrative channels. Youngs (2008: 8) has written that the EU Commission “resumed full funding as soon as the government agreed to (a non-committal) dialogue with the opposition. Italy increased aid threefold in 2006. Even much UK aid was in practice soon being spent in much the same way as before the elections.” According to OECD’s data, while the total aid commitments to Ethiopia from multilateral donors dramatically decreased to 360.21 million in 2005 from 1,309.1 million in 2004 (in constant 2016 USD), they again increased to 1,728.61 million in 2006. The adjustment of funding through local administrative channels can be considered to have defeated its purpose, as the local governing structure is under the influence of the ruling EPRDF coalition. In political arrangements in which the influence from the center descends to the lowest administrative channels possible, the prospect of such measures in safeguarding against the political capture of aid appears slim. In the words of Academic and Legal Practitioner, “following the change in the flow of aid, the regime made sure that the lower administrative channels are filled with its cadres so as to continue business as usual.” Negasso Gidada, Ph.D., a Former President of Ethiopia (1995-2001), believes that this change in funding contributed to the worsening of the situation by failing prey to the entrenched culture of corruption in the lower administrative channels.<sup>33</sup> Similarly, Wondwosen (2009: 1609) has argued that donors’ change of strategy, for example by channeling aid through the civil society sector, may explain the government’s quest to incapacitate the sector to ensure that donors have no option other than channeling aid through the state.

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<sup>32</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>33</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

Many of the interview subjects expressed that the outcome of the election was an utter surprise to the government. A legal practitioner and human rights activist who wishes to remain anonymous, and who is hereafter referred to as Legal Practitioner and Human Rights Activist, said that the ruling coalition made an error of judgment of its domestic legitimacy by underestimating the opposition groups as insignificant.<sup>34</sup> That is why, relatively speaking, it opened up the political space for different voices in the pre-election period. A similar statement was made by Merera Gudina, Ph.D., opposition politician and professor of political science at Addis Ababa University, who explained how the government was aiming at creating an image of a functioning democracy.<sup>35</sup> However, he said, the result ended up shocking it to its core by threatening its power. In the words of Mesfin Woldemariam, “they did not expect that the opposition would have a chance at a landslide victory.” Legal Practitioner and Human Rights Activist referred to the outcome of the election as “a wake-up call” for the government, making it aware that if such an incident were to happen again, it would not stop at being a wakeup call; it would probably be more. Hence, various discursive, legal, and administrative instruments started to be introduced to avoid or minimize the likelihood of “the most embarrassing political move of all times” - an incumbent refusing to give up power after an electoral defeat, he said. As rights-related discourse usually starts with transnational human rights advocacy networks and what they report as a point of reference, he believes that this has made domestic human rights NGOs victims of the government’s “overreaction.”<sup>36</sup> He also said that, if not for the role such organizations played during the days of the political crisis, the government would not have gone to the extent of putting in place “discriminatory laws”. As Wondwosen (2009: 1609) puts it:

*[...] [D]ue to the active and independent role of the civil society in the 2005 election, for the first time in the history of the nation, a high voter turnout was recorded, and opposition parties were able to score electoral victories that stunned the ruling party. Since then, the government has been contemplating either to fully control or neutralize the civil society so that it will not create a “problem” in the future elections.*

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<sup>34</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>35</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>36</sup> This statement resonates with the phrase Jon Abbink, Op. Cit., used to describe the role of transnational human rights advocacy networks, both international and domestic members. He said, their role was “not system threatening”.

According Human rights lawyer I, some developments resembled a flicker of democratic practice in the period before 2005. This view is shared by a former senior official at the Ethiopian Human Rights Commission (EHRC) who wishes to remain anonymous, and who is hereafter referred to as Former Senior Official at the EHRC.<sup>37</sup> He mentioned the 1995 Constitution as an example that showcases how much better, in relative terms, the period before 2005 was. Beyond the grant of human rights, the Constitution also details the mechanisms and institutions, such as the EHRC and the Office of the Ombudsman, that would later be organized for its proper implementation.

#### **4.1.2 Connecting the dots**

Asked whether there is a direct link or causality between the pressure put on target actors during the 2005 political crisis and authoritarian entrenchment, the relentless attempt to effectively institutionalize rule by law, Academic and Legal Practitioner stated:

*The link between the pressure applied in 2005 and the laws that are passed in the recent years is causal. There is no other explanation. Of course, there were few ground works before. [...] I admit that the government already had a repressive character before 2005, but the pressure applied then is responsible for the entrenchment of the repression that we see today. The tools were in a box before, but now they are out in the open, being used.*

Similarly, Human Rights Lawyer I said, “the causality is not a claim; it is a fact,” and the best way to observe this would be to compare the time before 2005 with the time after. He mentioned how the number of independent publications and CSOs tremendously deteriorated to the point of non-existence after 2005. Furthermore, the fact that government officials, including the late Prime Minister Meles Zenawi, have admitted that they learned a lot from what has happened clearly features the causal link, he added. This view is also shared by Merera Gudina, who stated that he has no doubt about the causality. He sees the recent legal and administrative changes as one of the many instruments that the regime uses to suppress dissent of any kind to ensure its staying in power for as long as possible. For Legal Practitioner and Human Rights Activist, the

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<sup>37</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.



causality can easily be perceived by paying attention to the processes, including the timing, through which the recent restrictive laws came about. We can clearly see, he argued, that they all followed the 2005 political crisis.

Many of the interview subjects agreed that, although the pressure was expected to result in a positive change in state behavior, this has not been the case. Journalist said, “Reports on people getting killed get out. But then, nothing happens.” Most of the interview subjects agreed that the impact of the pressure went beyond a null effect; it contributed to the unintended negative outcome of authoritarian entrenchment in state behavior via a relentless attempt to effectively institutionalize rule by law. In the words of Academic and Legal Practitioner, “absolutely no positive impact whatsoever.” The intention of the pressure was not to produce negative consequences, which makes it unintended, he added. Pressuring the government to share its power with the opposition, and to investigate and take action against the human rights violations perpetrated by its security forces, were some of the intentions.

The relationship between the Ethiopian government and the civil society in general and domestic human rights NGOs in particular has always been adversarial (Dupuy et al., 2015: 424). On the Enabling Environment Index developed by CIVICUS in 2013, Ethiopia ranks 102 out of 109 states with a score of 0.36.<sup>38</sup> Based on these statistics, it is fair to say that Ethiopia is a state with one of the least enabling environments for civil society. CIVICUS (2015: 86) states that Ethiopia has a “highly repressive” environment, in which actors in the civic space are often criminalized. The following excerpt from Government Communication Affairs Office’s (2010b) response statement to Human Rights Watch’s (2010a) report portrays how the EPRDF government views civil society:

*It is common knowledge that many NGOs in Africa are bank-rolled by foreign sources mainly to serve as Trojan horses for rigid neoliberal interest groups that seek [to] detect African politics. It has all too often been the case that diehard neoliberals underwrite*

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<sup>38</sup> On a scale of 1= most enabling, 0 = least enabling, the index measures governance, socio-cultural and socio-economic environments that affect the capacity of citizens (individually and collectively) to engage in the civil society sector. For further information, see at: <http://www.civicus.org/eei/>

*these organizations through which they try to leverage Africa's leaders and run the gauntlet against any governments that dares [to] resist their ideological preference.*

For Former Senior Official at the EHRC, the state-civil society relationship in Ethiopia is based on what he referred to as “mutual distrust.” For long, the EPRDF government has accused domestic human rights NGOs of providing “unsubstantiated” accusations to their international counterparts. The events in the lead-up and aftermath of the 2005 national elections, however, are believed by many interview subjects to have been responsible for triggering the systematic and legalized repression of the sector. The government was convinced that CSOs are nothing but the “opposition in disguise” (Human Rights Council, 2011: 3). According to Dereje (2011: 805), the long-established consideration of NGOs as “a bastion of opposition sympathizers” was institutionalized after the 2005 political crisis to deny the legitimate role of civil society in various economic and democratic processes. Beyond engaging in a counter-discourse that aims to discredit their credibility, the government radically altered the country’s regulatory framework to systematically criminalize and/or cripple domestic human rights NGOs.

Following the 2005 political crisis, “the EPRDF initiated a range of institutional regulations and legislation geared at restricting democratic space in the country and undermining the constitutional protection of human rights on a long-term basis” (Aalen & Tronvoll, 2009: 199). Of all the restrictive legislation passed in recent years, the CSP’s impact on domestic human rights NGOs is a case in point. This Proclamation is often highlighted as the major source of the repression on the sector. As explained in Chapter 2 (section 2.1), Article 14(5) of the CSP states that domestic organizations that receive more than 10% of their funding from abroad - Ethiopian Resident Charities/Societies and international organizations - are not allowed to conduct activities related to human rights, women’s rights, children’s rights, disability rights, citizenship rights, conflict resolution, or democratic governance. Hence, several organizations forfeited their mandate to work on issues with no reference to human rights, and those that struggle to continue had to scale down their operations, lay off their workforce, and close offices. Furthermore, they operate in a considerable climate of fear. In the words of the second human rights lawyer interviewed for the study who wishes to remain anonymous, and who is hereafter referred to as Human Rights Lawyer 2, “after the taking effect of the CSP, let alone collaborating with international human rights NGOs that are often portrayed as enemies of the state and its

developmental endeavors, we are terrified to even converse about the law and the impact it has had on our work.”<sup>39</sup> Journalist stated that, even if human rights violations are rampant in Ethiopia, no one is there to report them. He said, “the domestic human rights organizations are in short of the financial capabilities needed and the international ones lack the mandate to do so.” The excerpt from the interview with Human Rights Lawyer 2 presented below summarizes the points made above:

*As the advocacy in 2005 was perceived by the government to have negatively affected the image of the country, the whole civil society sector came to be perceived as a threat. Even organizations working on development issues were increasingly embedding their work in human rights with a rights-based approach to development. This, however, changed right after the taking effect of the Proclamation as it dictates to withdraw any rights-related wording unless one wants to exclusively work on human rights and be registered as an Ethiopian Charity or Society.*

For a practical grasp of the impact, let us consider the case of the Human Rights Council (HRCO), one of the few remaining domestic organizations mandated to work on human rights issues. HRCO was quite active during the course of the 2005 national elections. According to Wondwosen (2009: 1602), the two most important civil society organizations that played a significant role in the elections were the Christian Relief and Development Association (CRDA) and the Ethiopian Human Rights Council (EHRCO). EHRCO was the former name of HRCO. During the re-registration process, the Civil Society Agency (CSA) - a body created by Article 103(1) of the CSP to oversee its implementation - ordered the Council to change its name - omit the prefix “Ethiopian” from its title. The Council equates this with “the loss of a brand” (HRCO: 7). Article 57(6) of the CSP states that a domestic organization must have presence in at least five regional states if it has a “federal character and nomenclature”, which the Council failed to maintain due to the funding restrictions imposed by the Proclamation.

During the run-up to the 2005 elections, HRCO provided voters’ education to the public, which significantly contributed to raising the public’s political consciousness. On top of deploying election observers to monitor the electoral process, it has also investigated human rights

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<sup>39</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

violations perpetrated before, during, and after the elections. It has published and disseminated its findings as reports, some of which were used by the Universal Periodic Review (UPR) at the UN Human Rights Council. UPR is a mechanism that reviews the human rights situations of all member states of the UN. It has also sent alerts to the donor community through their Embassies and Delegations in Addis Ababa, Ethiopia, requesting intervention to stop the human rights violations being perpetrated at the time of the political crisis. According to Mesfin Woldemariam, it was not just HRCO but other domestic human rights NGOs were also vibrant. However, right after the election, he added, “they started to slowly die to reach to their current non-existent status.” The excerpt from the interview with Human Rights Lawyer 2 presented below shows the hardship faced by organizations that chose to maintain their human rights mandate by re-registering as Ethiopian Charities/Societies.

*Following the law, we were forced to raise funds from within the country, which was very tough. We didn't have the mechanisms and even the mind-set to do that. It was more of a trial and error at first. We were trying things that others were trying, and we soon realized that funds are needed to raise funds. Hence, we had to reduce activities such as research and awareness creation. This is affecting our advocacy work, as all of these activities need to go hand in hand to realize the change we want to bring. And, rights-related topics are not that attractive, as service provision for example, to our society. This has made it challenging to market our cause.*

Sisay (2012: 380) states that the CSP “impede the ability of CSOs to deal comprehensively with issues that lie in the intersections between human rights, governance, and development.” Asked about the routine criticism on the CSP’s adverse effect on the number of organizations that work on rights-related advocacy, a senior official at the CSA who wishes to remain anonymous, and who is hereafter referred to as Senior Official at the CSA, said that he would not be able to comment about this as it needs a proper comparison, which he thinks to be inapplicable in this case. He said that the sector lacked a clear system of organization before the CSP went into effect. Hence, a claim either about an increase or a decrease of their number cannot be made.

The statement of Otsieno Namwaya, a Kenya researcher at HRW, captures the CSP’s adverse effect on international human rights NGOs. He simply said, “We do not have access to

Ethiopia.”<sup>40</sup> Similarly, International Human Rights Worker 2 explained how challenging it is for international human rights NGOs to access Ethiopia, “where there is hardly any independent media and functioning CSOs.” By enforcing a legal framework that debilitates domestic human rights NGOs’ ability to network with their international counterparts, the government tries to sever transnational networking. “Before the law, our relationship with international actors, both international human rights NGOs and other actors, was good. After the law, however, all our international relations are almost totally severed,” said Human Rights Lawyer I. This situation increasingly contributes to an information blackout - the going under-reporting or lack of reporting of human rights violations.

## **4.2 The 2007/8 political crisis in Kenya: the pressure on advocacy targets and its impact**

Though the magnitude may not be equivalent to that of Ethiopia, the unintended negative outcome of authoritarian entrenchment in state behavior is also present in Kenya, where there is a relentless attempt to effectively institutionalize rule by law. The Kenyan government carries out legalized actions that are often accompanied by administrative predicaments to systematically criminalize or incapacitate civil society actors. Felix Kyalo, country representative for Kenya at the International Development Law Organization (IDLO) said that the law is being used “to achieve illegal ends.”<sup>41</sup> The fact that something is legal does not make it right, he added. There exists a persistent harassment of CSOs and individual activists that have tried to pressure target actors during the 2007/8 political crisis and the subsequent developments, such as the ICC proceedings. The incumbent President, Uhuru Kenyatta, and his Deputy, William Ruto, were persecuted by the ICC on charges of crimes against humanity for their alleged involvement in organizing and financing the ethnic and political violence during the 2007/8 political crisis.

During the field research in Nairobi, the processes that constitute the two parts of the mechanism used to explain the Ethiopian case (counter-discourse and quiet diplomacy, and regulatory crackdown) were observed at work. Hence, the trend is similar. Kenya clearly follows in the footsteps of Ethiopia, even if it is not yet quite the same. According to Herman (2014), the

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<sup>40</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>41</sup> In-person interview, November 2017, Nairobi, Kenya.

crackdown on the civic space in Kenya “followed a sadly well-worn script developed by authoritarian states, which are more inclined and better equipped than ever to export ‘worst practices’ when it comes to repressing civil society and silencing dissent.” This statement refers to Ethiopia’s practice of rule by law and how that serves as a blueprint for other states in the region that emulate its ways. In the words of Morris Odhiambo, regional project director of East and Horn of Africa at Freedom House, “Kenya is definitely part of the regional trend.”<sup>42</sup> Henry Maina similarly said, “Kenya has been a good student of Ethiopia.”

The relationship between the current government in Kenya and the civil society is often labeled “adversarial” as the actors in the latter often report facing harassment, intimidation, and threats from the former. The government, for its part, often accuses the civil society of being “too political.” Civil society actors, however, argue the contrary. As Suba Churchill, president at the Civil Society Reference Group (CS-RG), has explained, civil society actors have learned from experience that if they do not assume an active role in the political processes that determine who takes political offices, they might end up with a leadership that wants to revoke their rights to freely operate.<sup>43</sup> The roots of the current antagonistic relationship between the government and the civil society can be traced back to the disputed 2007 presidential election and the ethnic and political violence that followed. Odhiambo (2017: 11) states that the legacy of the 2007/8 political crisis defines the contemporary relationship between civil society and the Kenyan government. On the Polity IV scale, Kenya’s Polity2 scores dropped from 8 to 7 in 2007. The “vilification of CSOs” can be traced to their active involvement in documenting the human rights violations during the political crisis (Odhiambo, 2017: 11). Furthermore, their role in the subsequent developments, especially in the calls for accountability for the atrocities perpetrated such as the ICC proceedings, explain why the regime treats the civil society as its enemy. Government officials often use phrases such as “the evil society” to refer to the civil society in Kenya, and they often argue that they are tools of Western forces because they depend on foreign funding. The statement made by the Deputy President, William Ruto, in 2011, captures the dynamics of the state-civil society relationship in Kenya. He said, “NGOs should stop interfering with government

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<sup>42</sup> In-person interview, October 2017, Nairobi, Kenya.

<sup>43</sup> In-person interview, October 2017, Nairobi, Kenya.

matters, writing letters to their donors abroad to support the ICC intervention and compiling reports about post-election violence. It is none of their business” (Human Rights Watch, 2013).

The civic space in Kenya has considerably shrunk after Uhuru Kenyatta and William Ruto took office in 2013. The two campaigned for and won the March 2013 presidential election on a joint Jubilee Coalition ticket.<sup>44</sup> By presenting the case of Kenya along with the cases of Azerbaijan, Bahrain, Cambodia, Egypt, Ethiopia, Sudan, Turkey, and Thailand to showcase a trend in the increase of a crackdown on the civil society, CIVICUS (2015: 78) states, “[T]he main agency that is worsening conditions, in these states, is the state.” Kenyatta and Ruto assumed office while being persecuted at the ICC (on two separate, though related, cases) on charges of crimes against humanity allegedly committed during the 2007/8 political crisis. Kenyatta had been charged with five counts of crimes against humanity, including murder, forcible transfer of population, rape, persecution, and other inhumane acts. Ruto, on the other hand, was charged with murder, forcible transfer of the population, and persecution. There were three counts of crimes against humanity in total.

Both of these high-profile cases were later dropped, much to the dismay of many who hoped that the ICC’s involvement would address the entrenched culture of impunity in Kenya. Insufficient evidence due to lack of co-operation from the Kenyan authorities in providing the information needed to examine the extent of his involvement, among other factors, led to the withdrawal of the case against the President in December 2014. The charges against William Ruto and his co-defendant, Joshua Arap Sang, were similarly vacated in April 2016 for lack of evidence. Witness tampering was reported in both cases. Alleged intimidation and the use of bribes to force witnesses to change their testimonies, or withdraw from being witnesses altogether, were reported. Furthermore, the government has been accused of ignoring the harassment of, and the threats against, human rights activists and journalists who were perceived to be in cooperation with the ICC process.

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<sup>44</sup> The Jubilee Coalition was created by the coming together of four political parties - the National Alliance, the United Republican Party, the National Rainbow Coalition, and the Republican Congress Party.

#### 4.2.1 The political crises and the ICC's involvement

Deep-seated issues involving access to land and other resources, and the history of violence, accompanied by the culture of impunity, are often used to explain the roots of the 2007/8 political crisis.<sup>45</sup> Ndungu Wainaina, executive director at the International Center for Policy and Conflict (ICPC), explained how the elite often try to manipulate these structural grievances to advance political ends.<sup>46</sup> The immediate trigger of the crisis, however, was the alleged rigging of the December 2007 presidential election. Following the announcement of his re-election by the Electoral Commission of Kenya, the then-incumbent Mwai Kibaki was sworn in the very same day, a move that led the supporters of the opposition candidate, Raila Odinga, to start protesting the results by accusing the government of rigging the election. This was followed by extrajudicial killings by the security forces and ethnic-based attacks and reprisals from both sides of the political divide. While political violence has long been part of the electoral processes, the 2007/8 political crisis “was by far the [deadliest] and the most destructive violence ever experienced in Kenya” (Commission of Inquiry into Post-Election Violence, 2008: VII).

After conducting 200 interviews with various stakeholders in January and February 2018, HRW identified the different patterns of violence during the political crisis (Human Rights Watch, 2008b). First, there were extrajudicial killings by the state security forces, who used live ammunition against unarmed demonstrators and bystanders. The security forces were also accused of inaction to stop the commission of various human rights violations by the public. The second pattern of violence identified involves the organization of ethnic-based attacks and reprisals, otherwise called “revenge attacks.” Opposition supporters attacked ethnic Kikuyus and others who they assumed to have voted for the Party of National Unity (PNU), the incumbent Mwai Kibaki’s party. The Kikuyus are the largest ethnic group in Kenya to which Mwai Kibaki belongs to. Violence of this kind was largely planned and organized by local representatives of the Orange Democratic Movement (ODM), the then-opposition leader Raila Odinga’s party. This

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<sup>45</sup> In an attempt to give explanation to how and why violence has become a way of life in Kenya, CIPEV (2008: 21-36) lists four underlying factors. These are: the deliberate institutionalization of violence as a means to political power; the growing personalization of presidential power and the deliberate weakening of public institutions; historical injustices revolving around access to land and other resources; and the prevalence of poor and unemployed youth ready to join militias and organized gangs.

<sup>46</sup> In-person interview, October 2017, Nairobi, Kenya.



was followed by reprisal attacks by a Kikuyu militia known as *Mungiki* on non-Kikuyus who were perceived to be the supporters of the opposition. Violence of this kind was largely planned and organized by local representatives of the PNU. The political and ethnic violence was accompanied by sexual violence against both women and men. The sexual violence involved rape (gang and individual) and genital mutilation, most of which was ethnically driven. Hundreds of victims still suffer from the physical, psychological, and social repercussions of the sexual violence that they experienced during the political crises. While the government had announced a fund aimed at providing restorative justice for the victims of the violence in March 2015, this has not been made available.

The National Accord, which established a coalition government between the PNU and the ODM, was signed on 28 February 2008, facilitated by the Panel of Eminent African Personalities, a group of mediators designated by the AU and led by the former UN Secretary General Kofi Annan. In the coalition government, Mwai Kibaki remained as the President, while Raila Odinga took the newly established office of the Prime Minister. Another important outcome of the negotiations, specifically the agreement signed on 4 March 2008, known as Agenda Item 4, is the establishment of the Commission of Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission, as it was chaired by the Hon. Mr. Justice Philip N. Waki, a judge of Kenya's Court of Appeals. The Commission was mandated to investigate into "the facts and circumstances surrounding the violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters" (Commission of Inquiry into Post-Election Violence, 2008: VII).

In its 529-page report that appeared in October 2008, the Commission reported the death of 1,133 people (between 27 December 2007 and 29 February 2008), of which 405 were shot dead by the police. The report also documented 117,216 cases of property destruction and 3,561 injury cases. As a recommendation, the report proposed the establishment of a Special Tribunal (the Special Tribunal for Kenya) to prosecute the individuals most responsible for the violence. The report detailed procedures to be followed for the establishment of the suggested Special Tribunal with a timeline. However, if the Special Tribunal fails to commence functioning as envisioned, the report included a self-triggering mechanism whereby the matter would be referred to the ICC. It suggested that a list containing the names of those suspected to be the

most responsible for the atrocities perpetrated be forwarded to the Special Prosecutor of the ICC (Commission of Inquiry into Post-Election Violence, 2008: 473). While the coalition government agreed to the establishment of the suggested Special Tribunal, this failed to materialize in the stated timeline. Following the failure of the bills that were taken to the Parliament for this purpose, a sealed envelope with a list of the most responsible suspects was handed to the ICC in July 2009. Then, an official investigation by the ICC was launched in March 2010. On 8 March 2011, the ICC Pre-Trial Chamber II summoned six individuals, in two separate cases, to appear before the Court. The conditions of these summons remained throughout the duration of the proceedings. Unlike arrest warrants that impose obligation on authorities of state parties to arrest individual suspects, summons by the ICC impose obligation on the individuals to appear in court.

In the case concerning the opposition supporters' actions against the supporters of the government, William Ruto, Henry Kosgey, and Joshua Sang were charged with three counts of crimes against humanity, while in the case concerning the government supporters' action against the opposition, Francis Muthaura, Uhuru Kenyatta, and Mohammed Ali were charged with five counts of crimes against humanity. After the suspects' voluntary appearance at the initial hearing and the confirmation of charges hearings, in April and September 2011, respectively, the charges against Henry Kosgey and Mohammed Hussein Ali were declined. And the charges against Francis Muthaura, Uhuru Kenyatta, William Ruto, and Joshua Arap Sang were confirmed. The incumbent President, Uhuru Kenyatta, and his Deputy, William Ruto, who came to power in 2013 after campaigning on a joint ticket, were on different sides of the political divide during the 2007/8 political crisis. At the time of the summons to appear, Kenyatta was Deputy Prime Minister and Minister of Finance from Mwai Kibaki's side, while Ruto was a Minister of Higher Education, Science, and Technology, and a Member of Parliament representing ODM.

The ICC is an international tribunal for individuals charged with grave crimes such as genocide, war crimes, crimes against humanity, and crime of aggression.<sup>47</sup> The ICC sits in the Hague, Netherlands and was founded to address the global impunity crisis. A judicial process that is out of reach to leaders, who often find ways to avoid domestic persecution, serves as a last resort

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<sup>47</sup> See at: <https://www.icc-cpi.int/about>

for victims and survivors of human rights violations. The Rome Statute, a treaty adopted in July 1998 to establish the Court, came into force in July 2002, and the ICC has been operational ever since. By becoming party to the Rome Statute, States become a member of the ICC. At present, there are 123 member states, including Kenya, which ratified the Rome Statute in 2005. The ICC only steps in when national authorities are either unwilling or unable to prosecute individual criminals. The Court prosecutes individuals referred to it by a state party that the investigation concerns (where the suspected individuals are citizens of a state party or the crimes of concern are committed within the territories of a state party), or if the UNSC refers the case. The Kenyan cases are the first ones in the history of the ICC in which the ICC prosecutor took the initiative to submit an application to the Court requesting authorization to start a formal investigation. All precedent cases were either referred by a state party or by the UNSC.

#### **4.2.2 Connecting the dots**

Civil society was quite instrumental in the mediation process that ended the 2007/8 political crisis. Had it not been for the pressure, especially from the vibrant local CSOs, “Kenya would have gone to the dogs, said George Morara, deputy chair at the Kenya National Commission on Human Rights (KNCHR).<sup>48</sup> He believes that if it were not for the role of civil society actors, Kenya would not have had the Panel of Eminent African Personalities to mediate the power-sharing. He said, “They played a big role in putting pressure on the political belligerents to come and sit at the table.” Here, the role of the Kenyans for Peace with Truth and Justice (KPTJ) is a case in point. Right after the violence broke, 30-plus legal, human rights, and governance organizations mobilized into what has become the KPTJ, which began its operation by documenting the violence to conduct evidence-based, and robust international and regional advocacy.

According to Njonjo Mue, senior advisor at the KPTJ, “the international media was presenting the violence as just another case of African ethnic bloodletting,” and “the government at the time was presenting the crisis as a minor blip, which they were perfectly able to handle.”<sup>49</sup> KPTJ’s contribution was paramount in at least two regards. First, it made the case that the violence was not just an ethnic conflict but rather a political crisis that had acquired ethnic proportions. Second,

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<sup>48</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>49</sup> In-person interview, October 2017, Nairobi, Kenya.

it underscored to the international community that the political crisis needed intervention. In addition to reaching out to the diplomatic community in Nairobi, Kenya, the KPTJ undertook regional and international advocacy to lobby international organizations and individual governments with leverage to effect change. “We went to Addis Ababa, London, Brussels, New York, and Washington D.C. trying to mobilize international public opinion, [...] and that paid off,” said Njonjo Mue. The KPTJ was able to have a meaningful impact because it capitalized on its members’ thematic competence. Samwel Mohochi, executive director at the International Commission of Jurists (ICJ-Kenya) said, “some are good in documenting and others in advocacy, and we also have institutions that are good at service delivery.”<sup>50</sup>

Mike Gachanja, deputy director at the Center for Rights Education and Awareness (CREAW), emphasized the civil society’s role in documenting the various rights abuses during the political crisis. He said, “Most of the evidence used by the ICC was based on civil society research.”<sup>51</sup> The documentation also helped the ICC in locating key witnesses and survivors of the political crisis. “We were able to share our documentation with the ICC, and the research we did on sexual violence during the crisis informed one of the chapters of the Commission’s [Waki] report,” said Mike Gachanja with regards to the contribution his organization made. In a nutshell, the documentation enabled the different actors who wanted to address the situation to gain a better understanding of the context and the extent of the political crisis, he added. Similarly, Teresa Omondi, executive director at the Federation of Women Lawyers (FIDA-Kenya), stated that her organization, which provides legal aid to women, has also informed the sexual violence chapter of the Waki Commission’s report.<sup>52</sup> Henry Maina, on the other hand, talked about the advocacy that was done outside of the public domain. Attempts were made to advise the embassies of foreign governments on ways of influencing the situation. He mentioned few cases of deportation based on the information provided by the civil society actors about the whereabouts of the family members of the influential individuals from both sides of the political divide.

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<sup>50</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>51</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>52</sup> In-person interview, November 2017, Nairobi, Kenya.

“Absolutely,”<sup>53</sup> “of course,”<sup>54</sup> “definitely,”<sup>55</sup> and “exactly”<sup>56</sup> were some of the responses given to the question about the causality or the existence of a direct link between the pressure applied to target actors during the 2007/8 political crisis and the relentless attempt to effectively institutionalize rule by law. According to George Morara:

*There is no way that we can distinguish the active role of these organizations in trying to seek international accountability to local crimes with the hostility that they are experiencing now. There is a direct link. It is not even a matter of speculation.*

He then explained how the Kenyan government is not even on friendly terms with his organization, the KNCHR. The KNCHR is a national human rights institution established in 2010 in line with the Paris Principles. He added, “They say it is a bad Commission because we had worked closely with the victims of the 2007/8 violence to compile a report that the ICC made a lot of reference to.”

Njonjo Mue believes that, had it not been for the intervention and commitment of civil society actors, the efforts to deal with the 2007/8 political crisis would have ended the way the others before it had. The perpetrators of the human rights violations during the 1992 and 1997 political violence were not persecuted for their crimes. As Commission of Inquiry into Post-Election Violence (2008: 16) explains, a culture of impunity has become “the order of the day in Kenya.” “A commission comes and makes some sort of report; after a couple of months, it is forgotten and life moves on,” said Njonjo Mue. Civil society’s role in the inclusion of what is referred to as Agenda Item 4 as one of the four main agendas in the National Accord is often hailed as paramount. Otsieno Namwaya has stated that the first three agendas were the only ones that the negotiating parties were interested in incorporating in the Accord. He said, “it is the collaboration of international and local human rights organizations that forced Agenda 4 on the table.”

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<sup>53</sup> Njonjo Mue, Op. Cit., and George Morara, Op. Cit.

<sup>54</sup> Ndungu Wainaina, Op. Cit.

<sup>55</sup> George Kegoro, Op. Cit., and Felix Kyalo, Op. Cit.

<sup>56</sup> Suba Churchil, Op. Cit.

Agenda Items 1, 2, and 3 concerned ending the political crisis. Agenda Item 4, on the other hand, tried to address the underlying causes of the political crisis, including the impunity problem and issues related to historical injustices. Additionally, as already stated, the Waki Commission is one of the outcomes of Agenda Item 4. In addition to the above-discussed role in informing its report, civil society was directly involved in the works of the Commission to the extent of providing secretarial support. The Secretary of the Commission, and one of the interview subjects of this study, George Kigaro, had to take a leave of absence from ICJ-Kenya, the organization he worked for at the time, to serve in the Commission. As Njonjo Mue explained, once the Commission was established, the civil society made sure that it was filled with “people who were interested in justice as opposed to people who were looking for an opportunity for a three-month-long contract.” When it became clear that the Special Tribunal would not be formed, the civil society “kept the ball going towards the ICC.” He then explained the civil society’s involvement in the ICC process, and how this ultimately made the sector a target of retribution by the people who were being prosecuted by the Court. He said:

*We supported the ICC. We helped with the analysis and protected some witnesses before the ICC process kicked in with witness protection. We did a lot of advocacy in the international forums from the AU to the UNSC. In doing so, we developed very powerful enemies, especially the ones that joined forces and ran for the presidency.*

Similarly, Suba Churchill stated, “We have no apologies to make. It is true that we secured witnesses that we thought were at risk. We relocated them and placed them in safe homes.” Kenyatta and Ruto’s Presidential campaign in 2013 was heavily focused on the ICC process, or, in the words of Kenyatta, the “nightmare” (BBC, 2016). They often referred to the Court as a tool of Western imperialism aimed at compromising Kenya’s sovereignty. Over the course of the proceedings, there had been reports of intimidation, harassment, and threats towards human rights defenders in general and people who were perceived to be in cooperation with the ICC in particular. In fact, they explicitly hinted during the campaign that they would crack down on the civil society if given the opportunity to assume political office. The manifesto of the Jubilee Coalition titled *Transforming Kenya: Securing Kenya’s Prosperity (2013- 2017)*, which was released ahead of the March 2013 election, stated that if elected, the Coalition government would:

*Introduce a Charities Act to regulate political campaigning by NGOs, to ensure that they only campaign on issues that promote their core remit and do not engage in party politics. This will also establish full transparency in funding both for NGOs and individual projects (The Coalition, 2013: 65).*

Furthermore, the manifesto, which is structured along three pillars – unity (*umoja*), economy (*uchumi*), and openness (*uwazi*), vowed to create a “Charities Agency” that would address the budgetary allocation of the NGO sector. This explains the persistent attempts to amend the PBO Act of 2013, which has not yet become operational despite court rulings that call for its commencement. Civil society actors were actively involved in an umbrella network titled the Civil Society Reference Group (CS-RG) in drafting the Act.<sup>57</sup> It thus has various provisions that would improve the civic space when and if it is implemented. The PBO Act was signed into law in January 2013 by the then President - Mwai Kibaki. Implementation was, however, delayed due to the March 2013 election that brought the incumbent President and his Deputy. The two have “a bile against the civil society actors,” whom they accuse of having taken them to the ICC, said George Morara. Hence, when they came to power, they started their relentless attempts to amend the PBO Act rather than giving it a commencement date. As George Morara explains:

*The former president left a very good framework for moving the relationship between the NGOs and the government to a much better and more productive space. The current government has actually ensured that they roll back. They have never operationalized the Act even when the court told them to operationalize. They ignored the court blatantly. [...] If that Act is operationalized, it will bring about an element of mutual collaboration. The government doesn't want mutual collaboration between itself and the NGO sector. What the government wants is to crush the NGO sector.*

There had been several attempts by the Jubilee government to amend the PBO Act. Had these attempted amendments passed as law, the proposed limit on foreign funding of up to 15%, for

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<sup>57</sup> CS-RG was established in 2009, and it brings together a diverse array of CSOs both in orientation and level of operation. It currently has 212 Kenya based member organizations that work on issues ranging from humanitarian and human rights to development on community, national, regional and international levels. As stated in its current 5-year strategic plan (2016-2020) and as explained by its President, Suba Churchill, in an interview for this study, the Group aims at advocating for an enabling policy and legal environment for the civil society; promote mutual protection and self-regulation; and provide different trainings aimed at capacity building of its member organizations.

one, would have had the same devastating impact on domestic CSOs as in Ethiopia. George Morara referred to the suggestion on the funding restriction as “self-imposed sanction” in a state where many people are the direct beneficiaries of the NGO sector. “The same government that is heavily reliant on foreign borrowing is going for the peanuts of a sector that is holding it to account,” he added. Furthermore, the suggested expansion of the government’s control would have incapacitated the sector by putting it under direct government surveillance. According to one unpublished report by the Fund for Global Human Rights, quoted in Herbert (2015), while the actions of CSOs (including demonstrations, campaigns, and lobbying) have thus far been successful in opposing the attempts to amend the PBO Act, “it is clear that both legislative and non-legislative attempts to close space will continue moving forward.” This sentiment is also shared by CIVICUS (2015: 89), which states that, given the government’s track record, the fear remains that future attempts would be made to introduce such amendments. Furthermore, the fact that the Jubilee party has the majority in the current Parliament increases its legislative powers, which it can misuse against “entities that it doesn’t like,” said George Kegoro, executive director at the Kenya Human Rights Commission (KHRC).<sup>58</sup>

In the words of Otsieno Namwaya, “if they manage to pass the amendments, it will affect all of us, both domestic and international organizations.” He believes that consequences from the connotation of a “foreign agent” on the status of organizations receiving more than 15% of their funding from foreign sources would be devastating. “CSOs that would be classified as such might be barred from working on governance-related issues,” as has happened in Ethiopia, he added. He further stated how easy it would be to tailor assaults directly to those who are viewed as threats once they are identified and labeled. He too believes that the government has not given up. He said, “They will try to make some attempts again at trying to introduce new legislations and intensify the administrative measures to clampdown on the CSOs”.

According to CIVICUS “even when they fail to pass into law, these attempts exert a chilling effect and encourage a climate of self-censorship” (2015: 89). Furthermore, the government can still use administrative predicaments to make the civic space inhabitable, to say the least. Due to various legal and administrative bottlenecks put in place by the government, CSOs in Kenya face

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<sup>58</sup> In-person interview, October 2017, Nairobi, Kenya.



de-registration and freezing of assets. Many interview subjects explained how state institutions are used to perpetrate the crackdown on the civic space. According to Njonjo Mue, “there is an instrumentalization of institutions that should have been independent.” Similarly, Mike Gachanja stated that the government is on a “witch hunt” against CSOs that work on human rights and governance-related issues. These assaults are often executed by the NGO Coordination Board, a government body responsible to regulate the NGO sector.

The Board uses state institutions, such as the Kenyan Revenue Authority and the security forces, to justify the assaults that range from raiding premises and confiscating documents to de-registration of CSOs with accusations of tax evasion, support for terrorism, and so on. In December 2014 alone, the Board de-registered more than 500 organizations, froze their assets, and revoked the work permits of their foreign employees (Onyango, 2015). By using the Security Laws (Amendment) Act of 2014, which was signed into law by the President a few days earlier, the Board accused some organizations of having links with terrorist groups. The rest were accused of failing to submit financial records and other acts. The affected organizations took the matter to the High Court of Kenya claiming that the action was unconstitutional. As a result, 179 CSOs got reinstated in January 2015 (Herbert, 2015).

Soy Cherutoh Mercy, legal officer at the NGO Coordination Board, on the contrary, stated that the Board only operates within its mandate that it derives not just from the NGO Coordination Act of 1990, which established the Board, but also from what she referred to as “the terms and conditions.”<sup>59</sup> This is a document that highlights the requirements that need to be fulfilled by NGOs for registration. She said, “We need to make sure that organizations are in compliance with the Act and the terms and conditions” and stressed the need to regulate the sector to restrict “regulatory mischiefs.” She stated that failing to file an annual report is the most common offence that the Board often finds, which it punishes with measures that may amount to suspension or de-registration. Here, an excerpt from the interview with Felix Kyalo helps counter her statement. Kyalo explained how the Board stepped beyond its mandate in dealing with his organization, the IDLO, an intergovernmental organization that works to promote the rule of law. He said:

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<sup>59</sup> In-person interview, October 2017, Nairobi, Kenya.

*Intergovernmental organizations are registered with the Ministry of Foreign Affairs, not with the NGO Board. But the NGO Board, on a letter sent to the media instead of our office, said that the Ministry cancelled our country agreement and we no longer have a legal status to operate in the country unless we register with them. There is no legal way that an intergovernmental organization would register under an NGO regime. This is just an illustration of how the government misuses [the system] to target organizations it believes are not supportive of its agenda.*

Another example of the Board overstepping its mandate is the 15 August 2017 de-registration of the Africa Centre for Open Governance (AfriCOG) over claims that it was operating illegally. AfriCOG is not registered under the NGO Coordination Act of 1990, hence, it is not administered by the Board. It is registered under the Companies Act as a Company Limited by Guarantee.<sup>60</sup> In a letter addressed to the Directorate of Criminal Investigation, the Board asked for the immediate closure of the organization until it acquires a certificate of registration and the arrest of its directors. Furthermore, the Board asked the Central Bank of Kenya to freeze the accounts of AfriCOG. This came a day after the Board's second attempt to de-register the KHRC. Eventually, the judiciary overruled the de-registration of both organizations.

To conclude, examining the regulatory crackdown is important to clearly comprehend the unintended negative outcome of the pressure applied to target actors during the 2007/8 political crisis. The PBO amendments, the Security Laws (Amendment) Act, the Kenya Information and Communication (Amendment) Act, and the Media Council Act infringe upon human rights across the board. Violations of rights such as the *habeas corpus* rights of the detained; freedom of expression, association, and assembly; and the rights to privacy are some of the major rights under threat. Moreover, the government also practices inaction to systematically crack down on the civic space, forgoing its responsibility to provide protection for civil society actors. The government is often accused of continually ignoring, and at times encouraging, threat, intimidation, and attack of human rights defenders and journalists who were perceived to have supported the ICC investigation. According to Freedom House (2016), in Kenya, “journalists are

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<sup>60</sup> There are various legal regimes for the registry of CSOs in Kenya. To mention some, NGOs are registered under the NGO Coordination Act, Companies Limited by Guarantee are registered under the Companies Act, Societies are registered under the Societies Act, and Trusts are registered under the Trustees (Perpetual Succession) Act.

routinely beaten, intimidated, and threatened by both state and non-state actors, and at least 19 cases were reported in the first half of 2015 alone.” Hate campaigns on social media by government supporters targeted individuals and CSOs who advocated for international accountability mechanisms. It was a deliberate use of state machinery to expose those who stood firm against the atrocities of the 2007/8 political crisis. The circulation of their identities on social media endangered their lives, and the “attack continues to follow them to date,” said George Morara.

### **4.3 Contrasts in an otherwise similar trend**

There are some variations in the cases of Ethiopia and Kenya, which otherwise follow a similar trend. In contrast to the situation in Ethiopia, where there is no practical separation of power between the three branches of government, the judicial branch in Kenya is fairly independent. It has continued to overrule the attempts by the executive branch to shrink the civic space. Here, the Supreme Court’s ruling to nullify the results of the August 2017 presidential election on grounds of electoral irregularities is worth noting. This decision is the first of its kind in the African continent that has set a precedent for a judiciary acting independently, as it should, not just in Kenya and Africa but worldwide. In neighboring Ethiopia, however, all three branches of government are controlled by the ruling EPRDF coalition.

Ethiopia follows a parliamentary state structure in which the party with the majority of the seats in the legislature forms the executive branch. The EPRDF claimed to have won 100% of the seats in the legislature in the last 2015 national elections, and there is thus not even a single member of an opposition political party in the legislature. It would be implausible to expect an executive and a judiciary formed from such a legislature to have an independent standing. The legislature often endorses the Prime Minister’s recommendations for the positions of the President and Vice President of the Federal Supreme Court. Unlike Ethiopia, where the executive branch has a significant say in the appointment of judges, Kenya has experimented with a merit-based system after the promulgation of its 2010 Constitution. The President appoints the Chief Justice and Deputy Chief Justice from the candidates recommended by the Judicial Service Commission. The fact that this process is transparent significantly limits the executive’s influence over the judiciary. As explained by Henry Maina, what differentiates Kenya from Ethiopia are the checks and balances

inherent in the state structure, “a luxury that Ethiopia does not have,” he said. Similarly, Abdul Noormohamed, program officer at Open Society Initiative for Eastern Africa, has said:

*The good thing is that, at least in Kenya, we still have a functioning judiciary. It is not the best in the world, but it functions. People can go to the court and say, this is a bad law, and it goes against our Constitution, and there are judges who would listen to that. [...] It could be a lot worse. We could be in places where people do not have this opportunity at all.*<sup>61</sup>

As Jon Abbinik puts it, the Kenyan political system is more open than the one in Ethiopia. International Human Rights Worker 2 made a similar statement, noting, “there are many voices still speaking out [in Kenya], which is sadly not the case in Ethiopia.” This sentiment is also shared by the individuals interviewed from state agencies. For instance, Joash Dache, secretary/chief legal officer at the Kenya Law Reform Commission (KLRC)<sup>62</sup> affirmed that “Kenya’s civil society still has a strong voice, compared to other places.”<sup>63</sup>

Another contrast voiced by many interview subjects is the trust the civil society sectors in Ethiopia and Kenya have for their respective National Human Rights Institutions. KNCHR commands legitimacy in the eyes of the public and is viewed as a credible partner by the actors in the civic space. This, however, is not the case with its counterpart in Ethiopia – the Ethiopian Human Rights Commission (EHRC), which is often accused of being affiliated with the government. The EHRC was established in July 2002 to protect, monitor, and promote human rights in Ethiopia. The public does not have a trust in the EHRC as an independent promoter and protector of human rights. George Morara, said that the independence of the KNCHR in Kenya comes from the rigorous and merit based appointment process of its commissioners. The process is open to public scrutiny, and there are constitutional safeguards in place for the proper functioning of the Commission. Unlike the Standing Committee, the predecessor of the KNCHR, whose leadership was directly appointed by the President, “our loyalty lies to the Constitution

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<sup>61</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>62</sup> KLRC is a state agency that was established in 2013 with the mandate of reviewing the laws of Kenya to ensure their compatibility with the Constitution.

<sup>63</sup> In-person interview, November 2017, Nairobi, Kenya.

of Kenya,” he added. The KNCHR was established in 2010 by Article 59 of the Constitution of Kenya.

As the discussion in this chapter established an association between the causal condition and the outcome by connecting the dots between transnational human rights pressure at critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior, the next proceeds to present the two parts of the mechanism that causally link the two.

## Chapter 5

### The Mechanism at Work

This chapter presents the mechanism that causally connects the transnational human rights pressure at identified critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior in the cases of Ethiopia and Kenya. Through a mechanism with two parts, the pressure transnational human rights advocacy networks applied to target actors (target states and donors) during the 2005 and 2007/8 political crises in Ethiopia and Kenya, respectively, contributed to a relentless attempt to effectively institutionalize rule by law. Part 1 of the mechanism is called counter-discourse and quiet diplomacy (taking place in conjunction), and Part 2 is named regulatory crackdown. A detailed analysis of the observable implications of these parts in the two cases is presented in the following. Each part concludes with some reflective analysis.

#### 5.1 Counter-discourse and quiet diplomacy (Part 1)

As outlined in Chapter 3, the target states responded by constructing counter-discourse while donors responded by engaging in quiet diplomacy. These two processes, which constitute part 1 of the mechanism, make the claim that the relationship between transnational human rights pressure at the identified critical political junctures and the unintended negative outcome of authoritarian entrenchment in state behavior in the cases of Ethiopia and Kenya is causal. The counter-discourse by these states tries to discredit the credibility of transnational human rights advocacy networks and question their intentions. The target states frame human rights criticisms as a political attack disguised as human rights concerns. Furthermore, the counter-discourse aims to legitimize subsequent legalized actions that are often accompanied by administrative predicaments. This process takes place in conjunction with donors' lowered sensitivity to use their leverage in pushing the target states to comply with international human rights norms. Donors often refuse to condition development assistance to the target states pending on the improvement of human rights practices. They do not threaten to withhold or suspend aid, or to sever diplomatic relations. Donors prefer to practice quiet diplomacy. Instead of taking the

aforesaid measures, they say, they prefer to raise human rights concerns in the political dialogues they undertake with the target states outside of the public domain.

### **5.1.1 The counter-discourse**

As explained in Chapter 2, contemporary authoritarian states use legitimizing discourse to sustain their rule in the international system. They often do so, when and if needed, to impede human rights and democracy. The counter-discourses of Ethiopia and Kenya accuse transnational human rights advocacy networks of using human rights criticisms as a pretext to propagate their clandestine political agendas and tarnish their reputation. Members of transnational human rights advocacy networks, both international and domestic, are portrayed as agents of neo-colonialism and/or neo-liberalism. This line of reasoning also has proponents in scholarly debates, especially among scholars who use analytical frameworks inspired by Marxist thought (see Petras & Veltmeyer, 2001).

According to Petras “NGOs foster a new type of cultural and economic colonialism” (1999: 434). Nasir (2014) has argued that this is not a new phenomenon and has in fact always been the case: “NGOs have always been a continuation of imperial power, being created and staffed with colonial administrators in the wake of countries winning their independence.” NGOs’ allegiance to neo-liberal establishments and foreign funding makes them nothing more than agents that facilitate the exploitative integration of the developing world to the neo-liberalist macro-economic order (Petras, 1999). Their goal is to distract the masses from pursuing the “big picture,” that is, the struggle to control the basic means of production and wealth (1999: 436). This defeats the purpose of promoting the essential organizational culture needed for democracy to flourish (Wallace, 2009: 203). Such discourse often groups different types of NGOs together, thus running the risk of conflating operation NGOs with advocacy NGOs. Operation NGOs mainly design and implement development-related projects, while advocacy NGOs try to advance certain causes in effecting policy changes in their favor. Furthermore, this discourse disregards the variation within each type. Advocacy-oriented international human rights NGOs vary with regards to membership, organization, and advocacy and fundraising strategies, at the very least. If we take the case of HRW and AI, for instance, even though both advance the same cause, they differ in organization: AI is a membership organization, while HRW is not.

This discourse is often invoked by states that are in the spotlight of international scrutiny for their poor human rights practices. In Ethiopia and Kenya, members of transnational human rights advocacy networks are accused of an ideologically driven vendetta and serving as political instruments of “foreign forces.” Government Communication Affairs Office (2010b) states that organizations such as HRW are the “paid domestic lackeys” of “diehard neoliberals” that aim at “micro-managing” the politics of African countries. The Ethiopian government already considers neo-liberalism to be a dead-end for Africa’s development (see Meles, 2006, 2012). This discourse is used to justify funding restrictions on domestic CSOs that are referred to as “the opposition in disguise” and “the evil society” in Ethiopia and Kenya, respectively. As Davinder Lamba, director at the Mazingira Institute, says, these states do not differentiate civil society from the opposition; rather, they see civil society as a political group operating in the civic space.<sup>64</sup> Senior Official at the CSA said that the only way to maintain Ethiopia’s peace and development is by avoiding reliance on foreign funding attached to policy prescriptions, especially on political issues. This discourse is codified in Ethiopia’s CSP as a justification for the imposition of funding restrictions on domestic CSOs that address rights-related advocacy. The Ethiopian government often argues that, by ordering Ethiopian Charities/Societies to generate 90% of their funds within the country, it aims to minimize foreign intervention in domestic affairs. Government Communication Affairs Office (2010b) states:

*[...] [T]he FDRE government has made any foreign-funded NGOs’ intervention in domestic politics illegal. This irrevocable decision has made it impossible for fanatical neoliberal groups such as Human Rights Watch to manipulate Ethiopia’s political process. [...] [The] chance for backseat-driving Ethiopian politics through the NGOs that neoliberals bankroll has now been lost forever.*

The same is true for Kenya, where this discourse was in full force during the anti-ICC campaign. The government’s diplomatic campaign for a collective African withdrawal from the ICC was couched in this language. As discussed in Chapter 4, the anti-ICC campaign extended to whoever was thought to be in collaboration with the ICC, and domestic CSOs were the prime targets. Here, the proposals to limit domestic CSOs’ foreign funding to 15% in the attempted PBO

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<sup>64</sup> In-person interview, October 2017, Nairobi, Kenya.



amendments is a case in point. According to Odhiambo (2017: 11), the question that needs to be answered is the following: “Why [do] the same governments receive funding from foreign governments for projects or as direct budget support?” Similarly, Human Rights Lawyer I, in reference to the CSP Proclamation in Ethiopia, mentioned how ironic it sounds for a state that overwhelmingly depends on foreign aid to expect domestic NGOs to raise 90% of their funds domestically, when it is known that the task is impossible. If it was possible, he argued, the government would have been self-reliant. If we are to take a lesson from these attempts to incapacitate the domestic CSOs in Ethiopia and Kenya, it is that CSOs’ advocacy is a threat to those in power, triggering the backlash against them (Odhiambo, 2017: 11).

Both Ethiopia and Kenya have tried to factor in issues related to development and terrorism into their counter-discourse against transnational human rights advocacy networks. An unpublished report by the Fund for Global Human Rights, quoted in Herbert (2015: 11), states that recent discourse by the Kenyan government “has blamed NGOs for hindering development, insinuating that they have stolen money and exist only to criticize.” Portraying CSOs as anti-development is also the case in Ethiopia’s counter-discourse. Another similar trend in both cases is the use of terrorism in the counter-discourse to justify legalized actions to systematically criminalize the actors in the civic space. Given the states’ history of terrorist attacks, it is true that terrorism is a legitimate national security threat to both Ethiopia and Kenya. However, the global revulsion of terror is exploited to perpetrate human rights abuses at home. Both use the terrorist label as a pretext to punish domestic dissent. Terrorism threats are often invoked to justify restrictions to the freedom of expression, association, and assembly. The restrictions are often framed as counter-terrorism strategies against the terrorist organizations, such as *Al-Shabaab*, in the region (Herbert, 2015: 11).

#### **5.1.1.1 Ethiopia’s counter-discourse**

While the EPRDF government alleges that all human rights criticisms promote defamation, including the US Department of State’s annual *Country Reports on Human Rights Practices*, its responses are particularly harsh to members of transnational human rights advocacy networks. These responses, mostly in forms of press statements, are exceedingly hardline, filled with categorical rejections and often border on name-calling. The government claims that it is the

victim of human rights criticisms due to its pursuance of a different development strategy other than the neo-liberal model (Government Communication Affairs Office, 2015). This refers to its current experiment with the developmental state model, to which it attributes its economic success. Ethiopia's economy is one of the top-performing economies in Africa (see Chapter 6, section 6.2.2). Some, however, argue that the developmental state model is used as "a 'buzzword' to attain political ends in Ethiopia" (Routley, 2014).

A developmental state is characterized by a strong public sector to facilitate speedy economic growth and the industrialization needed for development (Mkandawire, 2001). This leaves insignificant room for civil society to flourish; this model is "suspicious of the independence of civil society" (CIVICUS, 2015: 87-88). Political rights and civil liberties are often crushed as the model tries to champion economic growth by overlooking their relevance (Leftwich, 1995). Furthermore, they are often treated as luxuries that must be put on hold until after the much-needed economic success is achieved. According to CIVICUS (2015: 88),

*[...] [T]he argument that democracy can be delayed until everyone has enough to eat may seem seductive, but the experience of China's model suggests that democracy is something that repressive rulers endlessly seek to defer.*

While Ethiopia, like a few other African states such as Botswana and South Africa, claims to pursue a slightly different version, the democratic developmental state, the attainability of a fully functioning democratic developmental state is contentious (Gumede, 2009). This is a model that aims to avoid the pitfalls of both liberal democracy and the developmental state. Its coupling of economic development with some procedural components of democracy is being used as a major source of legitimacy by the EPRDF government (Bach, 2011). The government argues that, at least on rhetorical grounds, withholding democratic rights until a developmental takeoff point, as the East Asian developmental states did, would have a chilling effect (Government Communication Affairs Office, 2015).

Given the various peculiarities of the developmental success in East Asian economies, some even doubt the possibility of replicating the developmental state model in the African context, let alone coupling it with functional democratic ideals (Musamba, 2010). The nature of the African states, which is usually characterized by neo-patrimonialism and incompetence in generating

developmental outcomes, is said to make it improbable to replicate the model in African context (Mkandawire 2001, 2010). Furthermore, the increasing liberalization of the global economy is thought to have a counter-productive impact (Wade, 2003). The model's need for a state that is autonomous from societal pressure, or "semi-democratic" (Meles, 2012: 167), has led to its common association with authoritarianism. Nevertheless, given the model's emphasis on social justice, its advocates underscore its particular suitability to transform the poor socio-economic realities of the Global South.

Human Rights Lawyer I noted that a weak and subordinate civil society is "a good political strategy" as it creates the illusion of an open civic space: "They let you exist and make your existence miserable at the same time." He then explained how Ethiopia uses the mere existence of domestic human rights NGOs as evidence to argue that it has not completely closed the civic space. Here, the practice of domesticating foreign funds is a case in point. As of the past few years, the EPRDF government has started signing bilateral agreements with some donors to consider the aid they give to domestic CSOs as part of the 90% of the funding that they are required to raise domestically. The EU's Civil Society Fund is an example. Moreover, the EHRC has channeled funds to some domestic CSOs through an initiative called the Democratic Institutions Program (Sisay, 2012: 381). According to Human Rights Lawyer I, besides ensuring that the civil society does not completely vanish, this arrangement gives the government the upper hand in dictating who receives what and how much. This involvement in the decision-making process concerning the allocation of funds, he added, also benefits government-affiliated organizations that are often disguised as part of civil society. Domestic state funding, especially in authoritarian contexts, often leads to a loss of trust from the public, as CSOs are considered to be co-opted by the state. This is the rationale that led CIVICUS (2015: 156) to conclude, "in repressive contexts, domestic state support simply cannot be a viable option for change-seeking CSOs."

According to Former Senior Official at the EHRC, the developmental state model creates an environment in which institutions that base their work on liberally inspired ideals are discriminated against because they are considered to carry "the liberal West's ideological baggage." And this, he added, often leads to the establishment of restraining legal and administrative procedures. The EPRDF government believes that a neo-liberal state would not

be able to deliver much-needed socio-economic development in Ethiopia. According to Government Communication Affairs Office (2015), due to its excessive emphasis on first-generation rights, a neo-liberal state would have a catastrophic outcome if applied in a state with a previously privileged social stratum with a considerable head start, as in Ethiopia. Hence, the “existential necessity” resonates with a strong developmental state that is “committed to end poverty as a precondition of full exercise of any named universal right” (2015: 19). For Negasso Gidada, this ideological stance, which often claims that the regime and its supporters are the only champions of development, has led to the dichotomized re-configuration of the Ethiopian society:

*There is the EPRDF and what they call forces of development such as the women and the youth that they have organized in leagues, the micro and small-scale enterprises, the filthy rich that are loyal to the regime, and so on. The remaining part of the society is what they often label with terms such as anti-development, rent-seekers, agents of the West, and so on.*

Except for rare occasions, the EPRDF government had been unresponsive to transnational human rights criticisms until recent years. It believed that it would be better off ignoring such “groundless fabrications” than engaging in “needless” controversies (Government Communication Affairs Office, 2009: 3). It views the reports of transnational human rights advocacy networks as an “obstructionist meddling in its internal affairs, often disguised as a right-protection intervention” (Government Communication Affairs Office, 2015: 30). Of course, it is not legally obliged to respond to such reports. Under international law, Ethiopia is only required to respond in the form of state reporting to the international and regional human rights treaty-monitoring bodies to which it is a party. A senior official at the EHRC, who wishes to remain anonymous, and who is referred to as Senior Official at the EHRC, stated that this emanates from the very premise of the international human rights law, which places the primary responsibility of human rights promotion and protection on state parties themselves. The response statements that the government seldom offers thus balance the information provided to the general public (Ministry of Foreign Affairs, 2008). The EPRDF government views engaging in a normative debate with human rights organizations as “politically irrelevant,” said Jon Abbink.

In recent years, however, the government has had a change of heart with the escalation in potential damages of the advocacy strategies employed by transnational human rights advocacy networks. It claims to have found it imperative to tell its side of the story to the “misinformed” global public and to defend itself against a “political campaign” against it (Government Communication Affairs Office, 2009). The state officials interviewed for the study, including Getachew Reda, acting Minister at the time of the interview of the Government Communications Affairs Office (GCAO), stated that keeping quiet in the face of the countless accusations of human rights abuses created the impression that the government is guilty of the claimed wrongs.<sup>65</sup> It thus revoked its earlier stance and began issuing response statements, no matter how infrequent. Nevertheless, it still limits its responses to the reports of “selected few” (Government Communication Affairs Office, 2009: 3).

In relative terms, the government seems to respond more to HRW’s reports than any other international human rights NGO with a similar mandate. This might be due to its utilization of potentially damaging advocacy strategies. HRW often reports on sensitive issues that range from elections-related human rights violations to the “political capture” of development aid and abuses by security forces. Besides GCAO, which was established in 2009 with one of its mandates being national image-building, the Ministry of Foreign Affairs (MOFA) also provides official responses. Moreover, the Ministry of Federal Affairs and some Ethiopian embassies in Western countries have also responded on several occasions. These responses are usually publicized by the state-owned media outlets. The Ethiopian Broadcasting Corporate has aired several documentaries and press statements refuting cases of human rights violations over the years.

The substance of the government’s response to all human rights criticisms is analogous; critiquing the methodology employed to investigate the reported violations seems to be the starting point. The government often claims that the reports are exclusively based on hearsay provided by opposition parties, terrorist organizations, and domestic and international NGOs with the apparent agenda of painting a disturbing portrait of the country’s state of affairs. Furthermore, the government frequently accuses all reports of one-sided reporting and of not incorporating its accounts into the accusations they document. Government Communication Affairs Office (2010a:

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<sup>65</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

7) has referred to this as an “elementary sense of fairness.” The government accuses all critiquing organizations of a “vitriolic campaign against Ethiopia” with “blanket allegations and downright lies” (Government Communication Affairs Office, 2010b).

In addition to the counter-discourse, there were some contentious incidents between the government and international human rights NGOs. For instance, on 27 August 2011, AI’s delegation was ordered to leave the country amid an investigation, and two political oppositions with whom the delegation was in contact with were imprisoned on terrorism charges (Amnesty International, 2011b). Even though the government stated that the arrest of these men had nothing to do with their meeting with AI delegates, many, including AI itself, believe that the action could not simply be a coincidence. Merera Gudina, who was just pardoned at the time of writing after a yearlong detention on terrorism charges himself, said, “their only wrong was meeting with AI’s delegates, nothing else.” As far as the domestic human rights NGOs are concerned, they are subjected to various forms of harassment, intimidation, and imprisonment, either arbitrary or legalized with laws that criminalize acts that can conventionally pass for human rights advocacy.

Government Communication Affairs Office (2015) is the government’s most thorough response to the accusations of human rights violations voiced by what the text refers to as “overzealous international NGOs and think tanks.” This 166-page-long text provides a detailed response to the most frequent human rights criticisms, ranging from restrictive laws to development-related human rights abuses. With regards to research-informed and detailed responses on specific human rights abuse allegations, Ministry of Foreign Affairs’s (2008) 47-page-long response text provided for HRW’s (2008c) report stands out. The response was issued after an inquiry team conducted an on-sight investigation into the alleged violations documented in HRW’s report. The team claimed to have uncovered several factual errors in HRW’s report. Although the government has been categorically rejecting all reports, HRW’s (2010b) report, *Development without Freedom: How Aid Underwrites Repression in Ethiopia*, seems to have received strong momentum in its eyes. The press statement issued by MOFA following the report referred to it as an attempt to “blackmail the international community” through deception (Ministry of Foreign Affairs, 2010). Realizing the gravity of the accusation, the government rushed to discredit it via several channels, which included the Ethiopian embassies abroad issuing response statements in

their own right. Moreover, the government tried to vindicate itself by referring to DAG's report, which contested the accusations.

In spite of what seems to be a complete antagonism to allegations of human rights abuse, Ethiopia's counter-discourse, on several occasions asserted that it is not aimed at denying its limitations concerning human rights promotion and protection. The argument is that, given the country's status as an infant democracy, it is no surprise that shortcomings manifest in meeting global standards. Further, this should not make the whole system a failure but rather a work in progress. Government Communication Affairs Office (2015: 21) invokes the inclusion of the incumbent regime's deeply rooted "undemocratic historical inheritance" and the country-specific contextual factors in any assessment of human rights progress, or the lack thereof, in Ethiopia. This refers to the country's history with dictatorial and monarchical state structures with roots extending to the time of the ancient civilizations.

#### **5.1.1.2 Kenya's counter-discourse**

Unlike Ethiopia, where the relentless attempt to effectively institutionalize rule by law in criminalizing or incapacitating the actors in the civic space appears to have succeeded, Kenya's counter-discourse seems less successful in the practice of a categorical dismissal. As Njonjo Mue puts it,

*When domestic civil society is weak, and an international actor produces a critical report, it is easy to dismiss it as not being grounded in fact. But Kenya is different. We have a very vibrant civil society. When AI or HRW produce a report, it is usually backed by what the domestic human rights organizations have already been reporting on, making it difficult for the Kenyan government to categorically reject allegations as if that was the only report that talks about the issue.*

Concerning the substance of the responses, especially to international human rights NGOs, George Kegoro refers to them as the "blanketing" of all criticism with one approach: "the Kenyan government paints all external actors, whether governmental or non-governmental, with the same brush. It is the same Western, white, imperialist interest." This "blanketing" of all actors as if they belong to one group at times extends to multinational corporations and international

organizations. Regarding a question on having a channel of communication to receive responses from the Kenyan government, Otsieno Namwaya, Kenya researcher at HRW, said, “If we have collaborated with a local actor, they prefer writing a response to a local than to us.” However, there were times that the government responded to HRW, he added. He recounted the case of a recent HRW report on the freedom of expression, saying, “They responded and we had discussed, but there was no follow up [...] Everything they promised they would do, they never did.”

In order to trace the counter-discourse that followed the transnational human rights pressure at the 2007/8 political crisis, we must factor in ICC’s involvement. As Zahid Rajan, executive editor at *Awaaz Magazine*, explains, the civil society was equated with the ICC, and “they were being demonized with the same amount of hatred.”<sup>66</sup> The government often referred to the ICC with derogatory phrases such as “a toy of declining imperial powers” (Human Rights Watch, 2016). Besides using it as a justification for the retributory legalized and administrative actions against individuals and CSOs that supported the ICC, Kenya has also used this discourse to launch a diplomatic campaign against the ICC at intergovernmental platforms, such as the AU. Felix Kyalo explained how the government used its diplomatic power to discredit the ICC and the civil society: “They campaigned against what they refer to as ‘a web of evil society’ with a regime-change agenda.” This rhetoric persists through the present.

Before the collapse of the ICC cases, the Kenyan government made various failed attempts to halt the process. To mention a few, the Kenyan National Assembly voted to withdraw Kenya from being a state party to the Rome Statute in December 2010, an appeal was made to the UNSC in February 2011 to defer the trials, and an application was filed at the ICC's Pre-Trial Chamber II to stop the process on grounds of inadmissibility. Furthermore, the government campaigned at the AU to push for a collective withdrawal of the African members of the ICC. Although this failed to materialize, AU's extraordinary session on 12 October 2013 passed a resolution calling upon the ICC to suspend the cases of Uhuru Kenyatta and William Ruto until they complete their terms of office and requested a grant of immunity for sitting heads of states from such prosecution in the future. Kenya has managed to be at the forefront of the counter-

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<sup>66</sup> In-person interview, October 2017, Nairobi, Kenya.



discourse against the ICC that painted the Court as “anti-African,” disproportionately targeting Africa and its leaders. It is true that the ICC cases so far have mainly focused on Africa, which created an opportunity for authoritarian African regimes to frame their resistance to the Court as part of a struggle between the West and the rest. But one must be reminded that African states constitute the largest share of the states that have ratified the Rome Statute. Furthermore, three of the African cases in the Democratic Republic of Congo, the Central African Republic, and Uganda were referred to the Court by the states themselves.

In a nutshell, the discourse about the ICC as an imperial project imposing its normative values on Kenya has had a trickledown effect on domestic human rights NGOs that are seen as proxies for transnational human rights initiatives. During their election campaign in 2013, Uhuru Kenyatta and William Ruto accused the civil society actors of betrayal by collaborating with a Court aimed at compromising Kenya’s national interest. They accused CSOs of serving the interest of their “neo-colonial masters” as they heavily depend on external funding. Samwel Mohochi described how the civil society's involvement in the ICC process brought the sector into direct conflict with the individuals who were being prosecuted at the Court. He said accusations such as "a foreign agent" and "puppets of foreign powers" that are aimed at delegitimizing their work, and the subsequent regulatory attempts to shrink the civic space show the "grudge" of the accused that happen to hold the highest office in government. He gave an example of a failed court case in which actors in the civic space contested the fitness of the two individuals running for the presidency while being accused of crimes against humanity. The case based its arguments on chapter six of the Constitution, which discusses leadership and integrity. The case was eventually dismissed on a technicality but remains pending in the Court of Appeal, as the two individuals have filed a bill of costs to be paid by the accusers. Mohochi said, "This shows the vengefulness of the individuals. Now that they are in government, they are using the government machinery to vilify those individuals and organizations" whom they accuse of taking them to the ICC.

George Kegoro sounded pessimistic about the effectiveness of naming and shaming those in power in Kenya. Being put in the position of a pariah would not shame the President and his Deputy, he said. “They do not care because they have been there before. They can ride it again and use it for domestic support the way they have done it before,” he added. The fact that transnational human rights pressure is more effective in states that are concerned about their

international standing validates this point. Similarly, Peter Kiama, executive director at the Independent Medico-Legal Unit (IMLU), stated how the President and his Deputy used international pressure to their advantage by framing it as an attack on the sovereignty of the state - a strategy that has worked "beautifully" for them.<sup>67</sup> He said, "they rode on this rhetoric and assumed power." They then consolidated their position and made sure the ICC process collapsed, he added. This situation leads Henry Maina to feel that Kenya follows in the footsteps of the other states in the region that seem not to worry about their international reputation: "Look at Burundi, look at Eritrea [...] They do not care" about their international legitimacy and thus openly violate human rights.

### **5.1.2 The quiet diplomacy**

Due to their ability to positively influence recipient states' human rights policies and practices, by attaching the fulfillment of conditionality to improvements in human rights practices, traditional/Western donors have been the major target of transnational human rights pressure. This strategy of leverage politics is conventionally expected to be effective in states that are assumed to be vulnerable targets. As discussed in Chapter 2, leverage politics entails the practice of persuasion and pressuring influential governments or international/regional institutions to effect favorable policy change (Kick & Sikkink, 1998). However, this has failed to materialize in the cases of Ethiopia and Kenya, where human rights practices and donor support appear to exist at odds with each other. Donors show less sensitivity to the pressure placed on them by transnational human rights advocacy networks to use their leverage in pushing these target states to comply with international human rights norms. They often refuse to condition development assistance on the target states pending on the improvement of human rights practices. They do not threaten to withhold or suspend aid or to serve diplomatic relations over human rights violations. Donors prefer to practice quiet diplomacy, raising their human rights concerns in the private political dialogues that they undertake with the target states outside of the public domain.

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<sup>67</sup> In-person interview, October 2017, Nairobi, Kenya.

### **5.1.2.1 Donors and Ethiopia**

According to Fantini and Puddu (2016: 91), Ethiopia, the “donor darling,” is a typical example of foreign aid’s adverse effect in sustaining authoritarianism. Transnational human rights advocacy networks often try to practice leverage politics by calling upon Ethiopia’s major donor governments and multilateral agencies. By doing so, they try to indirectly pressure the government to comply with international human rights norms. They persistently report on the “political capture” of development aid to underwrite the government’s “reign of repression.” Furthermore, they accuse donors of being reluctant to publicly acknowledge or condemn the violations, let alone thoroughly investigate them. On occasions when they have investigated, donors have been accused of “overlooking evidence” (Oakland Institute, 2013) and not acting upon confirmatory results.

#### ***The Ethiopian enigma***

While they have been accused of financing human rights violations through the government’s effort to strengthen its power, donors continued making aid disbursements. Rawlence (2012) refers to this puzzle as “the Ethiopian enigma.” International Human Rights Worker I explained how this situation disappoints those working in the human rights sector; they expect donors to be responsible and innovative in integrating and supporting human rights in their development assistance to Ethiopia. As the human rights agenda is part of the broader governance discourse that the Western donor community routinely advances elsewhere, this stance on Ethiopia shows a double standard at play. It seems as if donors turn “a deaf ear” to the deteriorating human rights situation in Ethiopia (Human Rights Watch, 2008c: 118). A statement made by Merera Gudina captures this practice:

*Though they may not openly acknowledge this, they somehow established a tacit understanding with the government that they would not bring up human rights issues as long as the regime delivers well on the war on terror. [...] The West pretends to not know and see when it comes to atrocities being perpetrated by pro-West African dictators.*

The account of a senior official at the DAG who wishes to remain anonymous, and who is hereafter referred to as Senior Official at the DAG, validates the above statement concerning the

existence of a “tacit understanding” between the donor community and the Ethiopian government.<sup>68</sup> He said that donors’ relationships with the government are based on mutual trust, and the government sees the donors as neutrals with no ulterior agenda other than supporting its developmental priorities. The officials interviewed from the donor community underscored the point that they have formal channels of communication with the government, or what they refer to as “constructive dialogue,” individually and collectively as part of the DAG, in which they raise governance-related concerns and more. Senior Official at the EU Delegation to Ethiopia stated that EU’s aid to Ethiopia is based on the condition that it is accompanied by a political dialogue on issues that concern either party, including human rights issues. Further, he said that this is incorporated in every discussion on a range of issues. The other official interviewed from the EU Delegation to Ethiopia who wishes to remain anonymous and is hereafter referred to Official 2 at the EU Delegation to Ethiopia, reinforced this point.<sup>69</sup> She referred to the Cotonou Agreement as the basis to raise human rights concerns that are often flagged by transnational human rights advocacy networks.<sup>70</sup>

Under Article 8 of the Cotonou Agreement, the EU is required to undertake regular political dialogues on a variety of issues, including human rights. All the interview subjects from the donor community, however, admitted that the EPRDF government at times openly refuses to embrace their recommendations. On such occasions, they said, they often end up agreeing to disagree. In the words of Senior Official at the DAG, “after all, Ethiopia is a sovereign state, and we are not here to dictate what it should and should not do.” By recalling the consultation donors had with the government before the launching of GTP II, this official went on to say,

*He [the prime minister of Ethiopia] said yes on A, B, C, and D and no on some other issues that he didn’t agree with. [...] If I put on a different cap, then, I would say, you bring your money and align it to the priorities of the government. If you don’t, you can take your money.*

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<sup>68</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>69</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

<sup>70</sup> The Cotonou Agreement was a partnership agreement signed in Cotonou, Benin, on 23 June 2000 between the EU and 79 states from Africa, the Caribbean and the Pacific regions. Stating equality of partners and global participation as its fundamental principles, the Cotonou Agreement entered into force in April 2003.

While the government's effort to institutionalize information blackout in its quest to stem the criticism on its poor human rights practices can be mentioned as a factor contributing to donors' inaction, this does not present the complete picture. The donor community is aware of the deteriorating human rights situation in Ethiopia. Merera Gudina said, "The regime is doing what it wants without a care in the world and with the acute knowledge of donors, who are well aware of what is happening as we are, if not more." Mesfin Woldemariam also said, "the government has decided to not care about what the West may say or do." In order to understand where Ethiopia acquires this leverage to stand against transnational human rights pressure, and Western donors' reluctance to be the expected "norm entrepreneurs" in promoting and protecting human rights, examining the systemic and case-specific contextual factors is helpful. This study aggregates and refers to these factors as strategic importance, which are presented in Chapter 6.

Though not as a statement in their official capacity, some of the interview subjects from the donor community pointed to the geo-political positioning of Ethiopia as a factor contributing to what seems to be preferential treatment by donors. For instance, the other official interviewed from the DAG who wishes to remain anonymous, and who is hereafter referred to as Official 2 at the DAG, stated that various factors can affect the inflow of aid into to a certain recipient state. And its geo-political positioning and the peace and security role that Ethiopia plays in the region "might be the reason that has led many to believe that it is being treated differently," she added. While they do not openly agree with the routine criticism of transnational human rights advocacy networks that the donor community treats Ethiopia differently because of these factors, statements like those mentioned above can be considered an implicit admittance. Asked directly if donors treat Ethiopia differently, Senior Official at the DAG stated, "As it is contextual, you can never have one-size-fits-all approach to development. So I will not say that one is treated differently. [...] It is all contextual based on country norms and traditions."

Donors continued allocating more aid to a regime at the forefront of international criticism for its poor human rights record. It also vocally experiments with a development trajectory, the developmental state, that is considered a competing alternative to the liberal agenda that its top donors that happen to be Western subscribe to (Dereje, 2011). While the international human rights regime hails the indivisibility of all human rights - economic, social, cultural, political, and civil - the EPRDF government officially embraced a development model that aims at the reverse.

As explained earlier in the chapter, the developmental state model tries to champion economic growth by overlooking the relevance of political rights and civil liberties (Leftwich 1995: 418).

Top Bilateral Partners	USD (m)	Top Multilateral Partners	USD (m)
United States	610.3	World Bank	847.6
United Kingdom	466.3	African Development Bank	222.0
European Union	170.8	Global Fund	182.7
Japan	146.6	GAVI	101.0
Canada	128.9	UN Funds and Programs	80.1

Table 5. Ethiopia's top bilateral and multilateral donors for 2012/13.<sup>71</sup>

The discussion in the following focuses on the human rights violations that the donor community is accused of sponsoring and its complicity. Rawlence (2016) claims, "There is almost no government activity in Ethiopia that is not underwritten by foreign money." Nevertheless, donors are reluctant to address the human rights violations in which they are directly or indirectly implicated, let alone take robust measures to address the wide-ranging human rights violations. International Human Rights Worker 2 stated, "We have tried to share lots of information that we have not published for the protection of informants, but they do not seem to be interested." Here, the political capture of development aid and the accompanying accusation of contributing to forced relocation are cases in point. By substantiating its allegations with the testimonies of 50 individuals, Human Rights Watch's (2010b) report details how development aid is politically captured to cement the EPRDF coalition's grip on power. Cases in which access to donor-funded resources such as loans, seeds, fertilizers, and other agricultural inputs were withheld from farmers who were critical of the government's policies have been documented.

### ***The Case of Promotion of Basic Services (PBS)***

The PBS is a multi-donor supported nationwide development program that has been severely implicated in overlapping with the Villagization Program, a relocation program run by the

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<sup>71</sup> Source: Development Assistance Group (2017).

government that is accused of perpetrating wide-ranging human rights abuses. Various donors including the WB, the DFID, and the EU supported the PBS through block grants to regional governments to improve access to basic socio-economic services. Although the government claims that the aim of the Villagization Program is to bring dispersed households in marginalized regions into villages to facilitate basic infrastructure and socio-economic services, different reports argue to the contrary (Cochrane & Skjerdal, 2015; Human Rights Watch, 2012; Oakland Institute, 2013). People have been forcibly relocated without consultation or compensation to new villages that often lack adequate food and fertile land, and basic services such as healthcare and educational facilities. Furthermore, human rights violations such as beatings, arrests, and torture are reported to have accompanied the forced relocations. Various reports accuse that a portion of the fund from the PBS was diverted to finance the Villagization program.

Following the persistent calls by transnational human rights advocacy networks to look into these allegations, donors have undertaken some “investigations.” Some examples include the multi-agency donor mission to the Gambella region in February 2011 with a follow-up in June 2012, the joint DFID and USAID visit to South Omo in January 2012, DAG’s trip to the OMO Valley in August 2013, and another DAG visit to the OMO Valley and Bench Maji in August 2014. What all these “investigations” seem to have in common is a statement declaring that the allegations could not be substantiated by the visits (Department for International Development & United States Agency for International Development, 2012; Department for International Development, United States Agency for International Development, United Nations, & Irish Aid, 2012). In a testimony to the Tom Lantos Human Rights Commission, Felix Horn, Horn of Africa researcher at HRW, questioned the very approach donors use in these visits (Human Rights Watch, 2014). He argued that the assessments that donors have made so far have not provided a safe environment in which victims of violations could testify without fear of retaliation.

International Human Rights Worker 2 states, “These visits happen through official channels, and we have received lots of reports that the local officials usually go to the villages and tell the people what to share and what to keep quiet about.” Therefore, he does not agree with calling these visits “investigations.” The failure to prepare a comprehensive public report is the other most voiced criticism of these visits. The argument made by Senior Official at the DAG, however, contradicts what has been discussed so far. While he acknowledges the possibility of such

“contradistinctions in development work” as valid, he believes that transnational human rights advocacy networks often blow them out of proportion. He said not to forget the fact that they too “have a job to do” and interests to advance.

To summarize, due to the accusation of funding human rights violations, donors have been subjected to various kinds of scrutiny. For instance, an alleged victim of the Villagization Program filed a lawsuit against the DFID at the UK High Court. This seems to have triggered the Department’s decision to withdraw support from the PBS. It shifted to other, less controversial programs while the overall aid flow to Ethiopia remained unaffected. In a statement published on its webpage on 26 February 2015, however, the DFID claims the opposite, stating that its decision, which it calls “transition in approach” was informed by its recognition of “Ethiopia’s growing successes.” This created the need for “transitioning support towards economic development to help generate jobs, income, and growth.” Moreover, the people affected by the same Program filed a formal complaint with the WB’s Inspection Panel, an internal accountability mechanism. Although the Panel’s report invoked the non-political mandate of the WB as a rationale for not thoroughly investigating the alleged human rights violations linked to the Villagization Program, it confirmed the existence of an “operational link” between the WB projects in Ethiopia and the Villagization program (Inspection Panel-World Bank, 2014)

### ***Do donors look beyond numbers?***

International Human Rights Worker 2 said that donors often do not look beyond numbers. On the surface, it seems that the world has moved away from a need-based approach to development towards a rights-based one. However, the reality makes one question whether this actually is the case. Looking beyond GDP and accounting for non-economic indicators is supposedly a better measure of the degree of human progress. This invokes the aligning of development with human rights. Amid such a shift of understanding in development, Ethiopia advances a development model that hails the significance of economic development over human development. The perception of Ethiopia as a promising development partner due to its economic progress helps to explain its “donor darling” status. As displayed on WB’s website, Ethiopia’s economy experienced growth averaging 10.5% per year from 2005/6 to 2015/16; it is expected to become a middle-income economy by 2025. According to Dereje Feyissa, Ph.D., senior advisor at the



International Law and Policy Institute (ILPI), donors do not want to dismay Ethiopia by entangling their development work with human rights conditionality, and they seem to be in what he refers to as “a beauty contest” to be a part of the story, in case it succeeds.<sup>72</sup>

While the abovementioned figure contributed to its consideration as one of the fastest-growing economies in the world, Ethiopia still ranks as one of the worst in the Human Development Index (HDI), a composite measure of progress that accounts for non-economic social indicators on life expectancy and education, in addition to income per capita indicators. This index classifies the states of the world into four categories: very high, high, medium, and low human development groups. The *Human Development Report 2016* categorizes Ethiopia in the low human development group with an HDI value of 0.448, which is below the mean for sub-Saharan Africa (0.523), and ranks it 174 out of 188 states (United Nations Development Program, 2016). As already stated, Ethiopia claims to owe its economic success to the developmental state model, which is an ideological rival to the liberal democratic model to which its major donors subscribe. Clapham (2017: 97) captures this irony:

*Running contrary to the ‘Washington Consensus’ model that equated economic development with the creation of liberal democratic political structures designed to assure the accountability of the rulers to the ruled, the Ethiopian developmental state project might have been expected to attract the hostility of the developed industrial states and international financial institutions. [...] In fact, this did not occur, and Ethiopia was able to draw on high levels of external assistance.*

#### **5.1.2.2 Donors and Kenya**

While Kenya had aimed at becoming a middle-income economy by 2030, which was stipulated both in the Jubilee manifesto of 2013 and the Kenya National Vision of 2008, it managed to become one in 2014. This was announced after its GDP was recalculated with updated data from the better-performing sectors: agricultural, manufacturing, telecommunication, and real estate. It is, therefore, less dependent on aid for direct budget support, which constituted only 16% of the government’s budget in 2013/14. Even so, according to OECD – DAC (2017), Kenya ranks ninth

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<sup>72</sup> In-person interview, September 2016, Addis Ababa, Ethiopia.

among the top 10 ODA recipients from DAC members. Furthermore, it is heavily dependent on various non-budgetary supports, especially in the area of security and justice. According to Bachmann and Hönke (2010), following the 9/11 terrorist attacks, donors have shifted their focus to capacity-building of the security sectors of the states in their engagement in the region. They increasingly frame counter-terrorism initiatives as part of the broader peace and security agenda. The blurring of the boundary between development and security assistance is popularly referred to as the “securitization of development.” Donors’ policy is “modified to combine diplomacy, defense, and development in addressing weak state capacities and instability in otherwise marginalized regions” (Bachmann and Hönke 2010: 98).

According to Collius Aseka, technical assistant at the Aid Effectiveness Secretariat (AES), development aid in Kenya can either be in the form of budget and non-budget support, and the former is minimal, as stated above.<sup>73</sup> Many donors prefer to do what he referred to as “appropriation in aid”: they hold the funds in trust of the government while making a contract with companies to carry out projects, such as infrastructural projects. “All the paperwork goes through the government, including the budgeting and the process of disbursement,” he said. As is the case with the DAG in Ethiopia, Kenya’s donors coordinate their support under the Donor Coordination Group (DCG) with WB as the permanent co-chair. This practice is in line with international aid effectiveness guidelines that call for the coordination of support to reduce transaction costs.

DCG is comprised of 17 bilateral donors and multilateral agencies, including Canada, Denmark, Finland, France, Germany, Italy, Japan, the Netherlands, Norway, Sweden, Spain, the UK, the US, and the African Development Bank (AfDB), the EU, the UN, and the WB. A sub-group called the Aid Effectiveness Group (AEG) includes the 17 members of the DCG and the Kenyan government and serves as a platform for information exchange on best practices and emerging challenges. AEG is supported by the Aid Effectiveness Secretariat (AES), which is based in the Kenya’s Ministry of Finance. AES is the focal point that brings together the donors and the government concerning technical and policy dialogues regarding development effectiveness.

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<sup>73</sup> In-person interview, November 2017, Nairobi, Kenya.

### **Donors' irony: "peaceful elections" versus "free and fair elections"**

*The ideals that they preach in the North are not what they practice in the South. The standards that they give themselves are not the standards they would want us to enjoy. They think we are entitled to lower standards, and their strategies of development cooperation have moved resources from non-state actors to states. They have lost their credibility and leverage they would have had. [...] Western countries have been supporting the government irrespective of what the government has been doing.*<sup>74</sup>

According to Njonjo Mue, as long as their strategic interests are intact, "donors are not bothered about the quality of the democracy that is being served here." He believes that Kenya is on the path of joining the regional trend of carrying out "sub-standard elections":

*We have seen that in Uganda next door, where any sort of election seems acceptable to them. In Rwanda, where no one really bothers too much about that. [...] Our colleagues around the region have been telling us that we are the last pillar standing.*

Similarly, Otsieno Namwaya recounted the EU's stance during the ICC process as an example to explain how the donor community values stability above all else. He said, "They were complaining that the ICC issue had destroyed their relationship with the government and affected their various interests within the country." They wanted to normalize relations with Kenya as quickly as possible and move on, he added. Njonjo Mue discussed donors' shifting of sides after the election of the President and his Deputy in 2013; donors warned that electing ICC inductees would have consequences. But once the two candidates won the election, the donors "needed to find a way of dealing with the new reality." Over the course of several years, he said, they have managed to "turn the ship around" to fully embrace the leadership. He then went on to offer his general views on the position of donors with regards to the civil society:

*If you are too vocal against the government, they would not tell you to your face that they would not fund you but you would walk around a bit before you find a partner who wants*

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<sup>74</sup> Samwel Mohochi, Op.Cit.

*to fund you in that kind of work. [...] As the civil society, we do not think that they are credible partners, and the opposition had dismissed them as enablers of dictatorship.*

Ndungu Wainaina explained donors' irony by discussing some events that took place before the October 2017 re-run of the presidential election. Some members of the civil society and the opposition, which had boycotted the election, voiced their concerns over the ability of the Electoral Commission of Kenya to undertake the re-run election. The core structural problems that resulted in the nullification of the previous election were not addressed at the time, he said. Therefore, some members of the civil society wanted "the process problems" to be addressed before having another election. But both the donor community and the government were determined to have the election regardless: "They just wanted an election, an election of any kind. They wanted to get it over with," he added. He finds it irresponsible to opt for such a stance in states such as Kenya, where incumbents use elections as a legitimizing tool.

Suba Churchill extended his analysis to the changing global dynamics, which he referred to as "the shift in the priority of donors." As they increasingly prioritize trade and security interests as opposed to good governance, he said, the conventional strategy of pressuring a target state via donors no longer works. Similarly, Felix Kyalo discussed the factors that have contributed to the "gradual shift" in the priority of donors by taking into account the impacts of various systemic factors at the international level. Asked whether donors bring up human rights concerns in the dialogues that they have with the government, Sandra Diesel, head of cooperation at the Swedish International Development Cooperation Agency (SIDA-Kenya), stated that they mainly use the DCG platform for information exchange, not as a space to discuss "such issues."<sup>75</sup> Sweden is the current co-chair of DCG along with the WB, the permanent co-chair. Sandra Diesel went on to say that, as a member of the EU, Sweden may address human rights issues collectively with the other EU members. Asked whether donors treat Kenya differently, she said, "I can only speak for Sweden, and we do not."

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<sup>75</sup> Phone interview, November 2017.

### ***The case of security funding***

Western donors such as the US and the UK, Kenya's former colonial master, are the major donors supporting its security sector. Various reports accuse Kenyan security agencies, which are funded by these donors, of perpetrating grave human rights violations within and outside the country. Transnational human rights advocacy networks have called upon these donors to condition their assistance with human rights promotion and protection and push for accountability for the violations being perpetrated. George Morara described incidences in which the KNCHR received reports of the donor-funded Kenyan defense forces committing various kinds of human rights violations in neighboring Somalia. However, the donors claim to follow what they refer to as "Leahy laws," which prohibit the funding of a military that commits grave human rights violations, he said. Furthermore, various cases have linked the donor-supported Kenyan security forces and innumerable human rights violations within the borders of Kenya. The Anti-Terrorism Police Unit (ATPU), established in 2003, has been implicated in various human rights violations in the context of anti-terrorism operations. Support for the Unit is mostly provided in terms of equipment and training. According to Open Society Foundations (2013: 17), the Unit received 10 million USD in funding from the US alone in 2003, and it has received massive amounts of support ever since.

Donors have been the target of transnational human rights pressure to re-evaluate their support of the Kenyan security forces, especially those that are directly implicated in the perpetration of grave human rights violations, such as extrajudicial killings and forced disappearances. Their public response to the accusation of complicity with the commission of human rights violations is usually a statement saying that they will address the matter in their discussion with the government. But there is hardly any visible outcome with this quiet diplomacy. In the words of Otsieno Namwaya, this approach is referred to as "quiet" for a reason: it takes place outside of the public domain, and no one can be sure that it does take place at all.

*The UK and the US would tell you that they are funding the Kenyan police, including the Anti-Terrorism Police Unit. But they say they also fund the Independent Policing Oversight Authority so that the police do not overstep their mandate. [...] Every time the Commission [KNCHR] came out and said that people have been killed, the UK and the*

*US do not want to hear that. I think if there was a way to tell us not to release those reports, they would.*<sup>76</sup>

In December 2014, *Al-Jazeera* aired a documentary titled *Inside Kenya's Death Squads*, in which members of the different police units, who often work in collaboration, admitted to routinely executing extrajudicial killings and forced disappearances.<sup>77</sup> They said these gross human rights violations are meticulously planned by high-ranking government officials in Nairobi and are mostly carried out against alleged terrorists. Due to the high risks, *Al-Jazeera* concealed the identities of those who spoke in the documentary. The interviews with the families of the victims show that the terrorist label has provided the government a "scapegoat" to legally violate human rights with impunity.

Kenyan authorities have been accused of failing to investigate such allegations and bring those responsible to account. Further, they are often criticized for not fully implementing the reforms promised, following the promulgation of the 2010 Constitution, to improve oversight and accountability of the police and security forces. In a report titled *The Error of Fighting Terror with Terror*, which was released in September 2015, the KNCHR documented over 120 cases of grave human rights violations against individuals and groups suspected of terrorism. These included arbitrary arrests, extortion, illegal detention, torture, extrajudicial killings, and forced disappearances. KNCHR reported that these "counterterrorism operations" are "widespread, systematic, and well-coordinated" by the Kenyan security forces, which include Kenyan Defense Forces, the National Intelligence Service, the Kenya Wildlife Service, county commissioners and their deputies, chiefs, and various units of the National Police Service, including the ATPU. These operations mainly target ethnic Somalis and Muslims. The report states that this profiling along ethnic and religious lines is against international human rights norms and often fuels further radicalization, making it ultimately counter-productive.

### **5.1.3 Counter-discourse by donors?**

After expressing how utterly ineffective quiet diplomacy is as an approach, International Human Rights Worker 2 stated that witnessing donors replicate the same rhetoric that the target states

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<sup>76</sup> George Morara, Op.Cit.

<sup>77</sup> See at: <https://www.youtube.com/watch?v=IUjOdjdH8Uk>

use in their counter-discourses is worrisome. Often, members of the donor community make statements that resemble what the target states portray in their counter-discourses. After referring to the perception of donors treating Ethiopia differently as “rubbish,” Senior Official at the EU Delegation to Ethiopia stated:

*They [International human rights NGOs] are not doing their job. They have been paid by the international community to do a job that they are failing at. If they were not failing, then, there would not be a zero impact. They are taking our money and spending it on themselves. [...] HRW, in my view, is a broken tool, which is failing to achieve what it should for the international community and providing good evidence of the human rights situation from all aspects. [...] HRW, Amnesty and Oakland, and most other international human rights organizations have taken a one-sided approach to Ethiopia. They are providing evidence which is less useful to us than it should.*

Similar to the counter-discourse of the Ethiopian government, this official then questions the methodology that transnational human rights advocacy networks use. He mentioned the non-physical presence of international human rights NGOs in Ethiopia as a reason for what he considers one-sided, biased reporting. He said this fact makes their significance to the donor community “of little value.” Such reasoning seems to blame international human rights NGOs for not working on the ground, to mean not having an in-country office. But the fact of the matter is that they cannot have a physical presence even if they want to. According to the CSP, human rights work can only be undertaken by an Ethiopian Charity/Society - an organization that is “wholly controlled by Ethiopians” and raise 90 percent of its funds from within the country. This clearly excludes international human rights NGOs. Similarly, Official 2 at the EU Delegation to Ethiopia mentioned this as a ground for not having a working relationship with international human rights NGOs. She, however, went on to say that the EU looks at their reports as “one of the many sources” that it takes into account in its own analysis of raised concerns. Then, the Union takes up the issues in the political dialogues that it has with the government.

The same is true for Kenya. According to Otsieno Namwaya, Kenya Researcher at HRW, donors are at times defensive regarding the accusations of funding repression rather than trying to investigate them. Recalling a recent encounter with the UK when researching extrajudicial killings

and forced disappearances of people linked to *Al-Shabaab*, he said, “They said we were lying” and argued that the police units that they support are clean, while evidence shows the opposite. Regarding the US, he said, they were willing to have a discussion and asked to be provided with evidence. Then, they said to take the matter to the Kenyan authorities and have an investigation of their own. “I do not think that they did,” he added.

Apart from funding these regimes, Western donors provide support to what Terrence Lyons, Ph.D., associate professor of conflict analysis and resolution at George Mason University, referred to as the “symbolic front.”<sup>78</sup> US President Barack Obama’s state visits to both Ethiopia and Kenya before the end of his term can be referred to as evidence of this claim. He had skipped both states during his previous visit to sub-Saharan Africa at the beginning of his term, which was seen by many as a way of sending a message that the US does not want to be associated with human rights violators, at least in the public realm, which later proved not to be the case. As Terrence Lyons explained, donors need to be mindful of what their actions say. Going on state visits would give these regimes the stamp of approval for the international legitimacy that they seek, he added.

As presented above, both the counter-discourses of Ethiopia and Kenya are in clear contradiction to liberal democratic values. This might come as a surprise given the fact that doing so defies the proclaimed stance of their major donors, who happen to be Western, and the international organizations under their substantial influence. Both Ethiopia and Kenya are among the largest recipients of security assistance in the continent, and donors refuse to condition assistance to these governments on the improvement of human rights practices. This puzzle can only make sense if we consider the systemic and case-specific contextual factors that the study aggregates to refer to as strategic importance that are presented in Chapter 6.

## **5.2 Regulatory crackdown (Part 2)**

This section presents part 2 of the mechanism, regulatory crackdown, which causally connects transnational human rights pressure at critical political junctures with the unintended negative outcome of authoritarian entrenchment in state behavior in the cases of Ethiopia and Kenya. Following the two preceding processes that constitute part 1 of the mechanism, counter-

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<sup>78</sup> Skype interview, September 2017.



discourse and quiet diplomacy, the target states embarked upon a regulatory crackdown to shrink or close the civic space. Ethiopia and Kenya passed repressive legal instruments in the form of anti-terrorism laws, media laws, civil society regulation laws, and so on to restrict or stop the activities of civil society actors (both individual activists and CSOs).

By enforcing legal frameworks that aim to incapacitate domestic human rights NGOs, the governments in Ethiopia and Kenya try to sever transnational networking processes, particularly the much-needed information exchange. Having a legally permissible environment is important to establish and sustain transnational human rights networks. Furthermore, the progressive realization of a human rights norm-compliant state behavior is profoundly dependent upon the existence of an enabling legal framework. In the words of the third human rights lawyer interviewed for the study who wishes to remain anonymous, and who is referred to as Human Rights Lawyer 3, "civil society organizations are not enemies," and they can be partners in what these governments try to champion.<sup>79</sup> Hence, they should be viewed in a positive light, and an encouraging environment should be created for their functioning, such as an enabling legal framework, she added.

### **5.2.1 Sample legal frameworks in Ethiopia**

The regulatory crackdown to shrink or close the civic space has been the major subject of reports by domestic and international human rights NGOs. Beyond constantly rejecting allegations of human rights abuses, Ethiopia has altered the country's regulatory framework to no longer make it convenient to monitor, document, and report on its human rights practices. The Charities and Societies Proclamation (CSP) of 2009, the Anti-Terrorism Proclamation (ATP) of 2009, and the Mass Media and Freedom of Information Proclamation (MMFIP) of 2008 are some of the accused legal frameworks. AI and HRW have reported that these laws, with the intention of silencing dissent and legalizing security officers' acts that are clearly against international standards, are major threats to human rights promotion and protection in Ethiopia. A detailed discussion of the CSP and the ATP is presented in the following section. These two legal frameworks constitute what Human Rights Watch (2010b) refers to as "the architecture of repression."

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<sup>79</sup> In-person interview, February 2016, Addis Ababa, Ethiopia.

### ***Charities and Societies Proclamation (CSP)***

The CSP was passed into law in February 2009 to regulate NGOs, mass-membership societies, charitable trusts, and foundations. It is, by far, the most reported-on subject by international human rights NGOs, including AI and HRW. These organizations have produced a detailed analysis of the Proclamation, an examination of its compatibility with international standards, and have offered recommendations for target actors, both the Ethiopian government and Western donors, ever since it was a draft (see Amnesty International, 2008). They have also submitted shadow or parallel reports to different treaty-monitoring bodies, urging them to pass country resolutions condemning the law, and lobbied donor governments and multilateral agencies to use their leverage in pushing for its amendment or repeal. HRW often says that the CSP is one of the most repressive civil society laws in the world.

With provisions that invite undue government interference and the imposition of severe funding restrictions on domestic human rights NGOs, the CSP undermines independent human rights work in the country. As discussed in previous chapters, the CSP only permits “Ethiopian Charities/Societies,” organizations acquiring “not more than 10% of their funds from foreign sources” and “wholly controlled” by Ethiopians (Article 2(2)), to work on human rights, women’s rights, children’s rights, disability rights, citizenship rights, conflict resolution, or democratic governance (Article 14(5)). Moreover, the Proclamation is often used to justify the banning and asset freezes of various domestic CSOs (Tinishu, 2013). As a result, human rights NGOs have substantially decreased in number. Several have forfeited their mandate and shifted to activities with no reference to human rights work, and those that struggle to continue have had to reduce their functions, lay off their workforce, and close offices.

The extensive powers that the Proclamation grants the Civil Society Agency (CSA) are as detrimental as the funding restriction on human rights work (Human Rights Council, 2011: 5). In light of Article 76(3(b)), the CSA has the power to decline renewing the license of a CSO that it considers to have violated any of the provisions in the Proclamation. As fulfilling all the provisions of the CSP is “nearly impossible,” the government has a legal ground to “arbitrarily dissolve organizations” (Human Rights Council, 2011: 6). Senior Official at the CSA said that the monitoring and evaluation department of the Agency evaluates the works of CSOs starting from

the plan of action that they submit at the beginning of the fiscal year and their budget. If the CSA is convinced that they operate against the law, it takes action depending on the degree of the offense, with the cancelation of their license to operate as the ultimate one. He then discussed the mechanisms presented to the affected CSOs, which he said to be "very much favorable" to Ethiopian Charities/Societies. Here, referring to an actual case would help paint a clear picture. Let us take the case of HRCO, an Ethiopian Charity/Society, to see if the procedures are as favorable in practice as claimed in the above statement.

HRCO's contingency funds in four private banks (9.5 million Ethiopian birr) were frozen by the order of CSA's Director. In a letter sent to the Council, the CSA stated that HRCO cannot change into an Ethiopian Charity/Society while possessing the funds and assets that it received from foreign sources (Human Rights Council, 2011: 8). Even though many, including AI and HRW, stated that the action was a retrospective application of the law on funds received before it came into force, the funds were still frozen. HRCO then appealed to the Board of the CSA, which stood by the Director's decision. According to Article 104(1-3), all CSOs may appeal to the Board of the Agency regarding a decision of the Director. However, the Ethiopian Charities/Societies are the only ones that can appeal against the decision of the Board to the Federal High Court. "If the affected CSO is an Ethiopian Resident Charity/Society, its case would be handled administratively," said Senior Official at the CSA. HRCO, then, took the case to the Federal High Court, which upheld the decision of the Board during its hearing on 24 October 2011 (Amnesty International, 2012: 14). Once again, HRCO appealed the Court's decision to the Cassation Bench of the Federal Supreme Court stating a fundamental error of law, which also upheld the decision of the Federal High Court. It is fair to say that the available mechanisms do not seem favorable to Ethiopian Charities/Societies, as claimed by Senior Official at the CSA.

Another notable impact of the CSP is the institutionalization of a climate of fear in the civic space. Just after it was passed, many human rights activists fled the country; those who remain operate in fear, and they self-censor to avoid violating the provisions of the Proclamation. Article 77(3) prohibits CSOs from receiving anonymous donations and orders them to keep a record of donors' identities. In a country where the government considers human rights organizations "the opposition in disguise," people hesitate to candidly provide support due to fear of governmental retaliation. The possibility of domestic fundraising is limited as it is, and this provision considerably

exacerbates the situation. Moreover, Articles 85 and 87 authorize the CSA to have unrestricted access to any document in a CSO's possession. These provisions infringe upon the CSOs' ability to practice the principle of confidentiality, which is indispensable for any human rights work. This would compromise the safety of victims and witnesses of human rights violations by putting them at risk of possible retribution. Furthermore, it is in direct contravention to the right to privacy enshrined in Article 17 of the ICCPR (Amnesty International, 2012: 8).

While the government often claims that the CSP enhances the accountability and financial transparency of CSOs, both domestic and international members of transnational human rights advocacy networks often argue that the real intention in passing this piece of legislation is to put the civic space under direct government surveillance. Many of the interview subjects stated that the imposition of severe funding restrictions only on organizations that address human rights and governance shows the discriminatory nature of the law. According to Human Rights Council (2011: 4), ordering organizations to generate 90% of their income within a country where domestic philanthropy is known to be non-existent is an excuse to systematically eradicate independent human rights work.

Furthermore, the application of the law makes one question its intention. If the intention is as the government claims, then why bend it, when and if needed? Why exempt some organizations from the negative impacts of the law? Sisay (2012: 381) mentions the cases of two domestic organizations that are allowed to work on human rights issues with unrestricted access to foreign funding, arguing that this is an arbitrary application as the law does not even hint at the possibility of such discretionary power to be applied to Ethiopian Charities/Societies. According to Article 3(2)(b), the CSP provides the possibility of non-application of the law by virtue of an agreement with the government, only to international organizations.

### ***Anti-Terrorism Proclamation (ATP)***

The ATP was passed into law in August 2009 with a broad and vague designation of what constitutes an act of terror. After asserting how broad the ATP is, Senior Official at the EU Delegation to Ethiopia said that the EU is working with the government to “identify and tie up loose ends in the law.” In the words of Yacob Hailemariam:

*The ATP is the biggest threat to human rights. It is a draconian legislation, which smashes human rights in every sense of the term. It is absolutely unimaginable in the 21st century that a country can enact a law like this. [...] It is so broad that you can fit any activity into it.*

The ATP is often accused of using the terrorist label as a pretext to detain and charge opposition political party members and independent journalists. The trial proceedings of the individuals charged under this Proclamation, which are commonly referred to as the “anti-terrorism trials,” have been the chief subject of reporting by members of transnational human rights networks in recent years. There are cases in which political oppositions were kidnapped from other states to be persecuted under the law. Furthermore, journalists are routinely put on trial with the accusation of acts deemed to “encourage” or “provide moral support” to groups that the government considers terrorists. According to Article 6, this offense is punishable by 10 to 20 years in prison. AI documented the detention of 108 opposition members and journalists charged with terrorism offenses in 2011 alone (Amnesty International, 2011c). According to the Committee to Protect Journalists and HRW’s research, Ethiopia is the leading incarcerator of journalists in Africa and has the most journalists in exile in the world next to Iran (Human Rights Watch, 2015). This resulted in the closure of various publications that were critical of the government. The media is a major partner in information politics, and this situation places serious strain on transnational human rights advocacy networks’ capacity to mobilize pressure against human rights violations. Furthermore, the Proclamation was used to convict the leaders of the Muslim protest movement, which took place in various parts of the country from 2012 to 2014, over perceived government interference in religious affairs.

The different provisions in the ATP are in direct contravention of international standards. Besides allowing a crackdown on freedom of expression, association, and assembly, the ATP limits suspects’ right to due process of law. For instance, Article 20(3) allows terrorism suspects to be held up to four months in pre-trial detention. This contradicts Article 17 of the Federal Constitution of Ethiopia and Article 9 of the ICCPR; both call for the prompt charge or release of suspects in custody. The ATP enabled the arbitrary detention and poor treatment of individuals with alleged involvement with outlawed groups, which are labeled as terrorist organizations. These are the Oromo Liberation Front (OLF), the Ogaden National Liberation Front (ONLF),

and Genbot 7. The Ethiopian government is accused of using the outdated “imprison first, investigate later” approach (Human Rights Watch, 2008e) when it comes to people suspected of membership, support, and sympathy to these organizations. It is often reported that these rights abuses are part of a broader campaign to silence dissenting voices in the country.

Cases in which individuals from the Oromo ethnic group are detained on suspicion of involvement with the OLF have been reported for some time. This, of course, has intensified with the labeling of the group as a terrorist organization, a leap many say gave the government a free pass to perform a heightened level of repression against the ethnic Oromos. According to AI, between 2011 and 2014, “at least 5,000 Oromos have been arrested as a result of their actual or suspected peaceful opposition to the government” (Amnesty International, 2014: 8). Similarly, HRW often accuses the government of justifying the rights abuses and sustained intimidation of its critics in the Oromia region with the allegation of membership and support of the OLF (Human Rights Watch, 2005). As explained in Chapter 3, this abuse pattern is reported to have increased following the *Oromo protests* that have started with the introduction of the government’s masterplan to integrate parts of the Oromia Regional State with the federal capital of Addis Ababa in April 2014. Furthermore, various cases of arbitrary detention and extra-judicial killings in the Somali region on suspicion of involvement with the ONLF have also been reported. These violations are said to have intensified after the ONLF’s attack on the *Obole* oil installation in April 2007, which took the lives of several Chinese and Ethiopian civilian workers.

### **5.2.2 Sample legal frameworks in Kenya**

This section presents sample legal frameworks that are often accused of aiming at shrinking or closing the civic space in Kenya. These include the Prevention of Terrorism Act of 2012, the Security Laws (Amendment) Act of 2014, and the PBO amendments. Besides these laws, the Kenya Information and Communication (Amendment) Act of 2012 and the Media Council Act of 2013, for instance, are some of the other laws that the interview subjects mentioned as having a similar impact. What all of these laws seem to have in common is the fact that their most limiting provisions are framed in the language of promoting national security. This is often justified within the context of the war on terror.

## ***Prevention of Terrorism Act***

This Act was signed into law by President Mwai Kibaki in October 2012. As is the case with the Ethiopian ATP, this Act is often criticized for being overly vague, beginning with the definition of what constitutes the act of terrorism. It is broad enough to encompass ranges of acts listed under Article 2. After listing acts that would qualify as terrorism, Article 2(b) uses broad statements to define the act in terms of its aim. It defines terrorism as an act carried out with the aim of “intimidating or causing fear amongst members of the public or a section of the public,” “intimidating or compelling the Government or international organization to do, or refrain from any act,” or “destabilizing the religious, political, constitutional, economic, or social institutions of a country, or an international organization.”

Open Society Foundations (2013: 61) states that the Act’s vague definitions of what constitutes the act of terror, its limits on due process of law, and its expansion of the security forces’ powers makes it susceptible to be used “as a tool against political opponents, civil society, religious and ethnic groups, minorities, and common criminals.” To use the expression by Abdullahi Halakhe, East Africa researcher at Amnesty International (AI), “the state can frame any resistance in the language of terrorism.”<sup>80</sup> The inclusion of two human rights organizations, Muslims for Human Rights and Haki Africa, in the official list of 86 individuals and groups accused of providing support for terrorism, announced by the government on 7 April 2015, is one example that shows how the law is used to target civil society actors. These CSOs are well known for documenting human rights violations committed by Kenyan security forces in counter-terrorism operations.

Hereafter are discussed some of the most restrictive provisions in the Act. Article 35 allows limitations on specified fundamental freedoms that are clearly enshrined in the Constitution of Kenya. Among other reasons, this is to ensure “the investigations of a terrorist act.” The fundamental freedoms to be limited are the right to privacy; the rights of an arrested person; the freedom of expression, the media, and of conscience, religion, belief, and opinion; the freedom of security of a person; and the right to property. According to Article 3, the Inspector-General can make a recommendation to the Cabinet Secretary to designate a certain organization as a “specified entity.” Acting on “behalf of,” “at the direction of,” or “in association with” another

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<sup>80</sup> In-person interview, October 2017, Nairobi, Kenya.

entity designated as a “specified entity” suffices to be branded with the label. These vague statements enable the government to extend the terrorist label to CSOs for unknowingly associating with another entity that is already designated as such. Last, Article 33(10) allows the police to detain individuals in a pre-trial investigation for 30 days, which can be extended up to 90 days.

### ***Security Laws (Amendment) Act***

This Act, which aims to amend various existing laws to advance Kenya’s national security, was signed into law by President Uhuru Kenyatta in December 2014. Since the time it was introduced as a Bill, the Act was accused of violating international standards and the bill of rights enshrined in the Constitution of Kenya. A further discussion of some of the most restrictive provisions in the Act is presented in the following paragraph.

Article 4 of the Act, which amends the Public Order Act, empowers the Cabinet Secretary of Interior, appointed by the President, to make a decision on “the areas where, and times at which public meetings, gatherings, or public processions may be held.” This is a clear restriction on the freedom of assembly and association. Article 75, which amends section 30(a) of the Prevention of Terrorism Act, states that a person will be imprisoned for 14 years if he/she “publishes or utters a statement that is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism.” Furthermore, amendments to section 30(f)(1) and (2) also prohibit the broadcasting of any information or pictures that would “undermine investigations or security operations relating to terrorism” without police authorization. This offense is punishable by up to three years of imprisonment or a fine of five million Kenyan shillings, or both. These broad and vague statements can be used to curtail freedom of speech. Article 77(d), which amends section 33 of the Prevention of Terrorism Act, extends the pre-trial detention of terrorism suspects from 90 days to 360 days. Article 66, which amends Part V of the National Intelligence Service Act, defines “covert operations” as “efforts and activities aimed at neutralizing threats against national security.” It also grants extensive surveillance powers to security officials; for instance, the Director-General may authorize a covert operation “to obtain any information, material, record, document, or thing.” To this end, security personnel can “enter any place or obtain access to anything,” “search for or remove or



return, examine, take extracts from, make copies of, or record in any manner the information, material, record, documents or thing,” “monitor communication,” “install, maintain, or remove anything,” and “do anything considered necessary to preserve national security.”

The Act faced strong opposition from the civil society sector and the opposition. Though civil society actors campaigned to stop the law, they only succeeded in obtaining some provisions to be ruled unconstitutional by the High Court of Kenya. In practice, the security forces still enjoy the excessive powers granted by the law. According to Suba Churchill, the law is thus misused to curtail fundamental rights and freedoms.

### ***The amendments to the PBO Act***

Several attempts have been made to amend this Act, which is yet to be operationalized. President Mwai Kibaki signed the PBO Act into law in January 2013. The implementation, however, was delayed due to the March 2013 presidential election that brought the current President, Uhuru Kenyatta, and his Deputy, William Ruto, to office. The new government should have made the law operational, but this has not yet happened due to a lack of political will. As discussed in detail, the two have campaigned by using a discourse that blames civil society actors for their indictment at the ICC. Despite various court rulings and a serious push, especially from the actors in the civic space, that call for the Cabinet Secretary for Devolution to officially announce the commencement date of the Act, this has not yet been successful. Rather than implementing the Act, the government has been relentlessly trying to amend it with provisions that clearly demonstrate aspirations similar to Ethiopia’s CSP. As discussed in Chapter 4, these attempts have so far not succeeded. Introducing a 15% limit on foreign funding and increasing the executive branch’s influence over the “Public Benefit Organizations Regulatory Authority” are some of the suggested amendments.

When and if implemented, the PBO Act would create an enabling environment for CSOs in Kenya. Amongst other things, the Act would provide an opportunity for CSOs to self-regulate and partner with the government, and it would bring together all the CSOs that are registered under different legal regimes. There are various legal regimes for the registry of CSOs in Kenya. According to the ICNL (2018d), the term CSOs in the Kenyan context is used to refer to a range of organizations that operate between the realm of the individual and the state. Whereas the

term NGO refers to organizations registered with the NGO Coordination Board and governed by the NGO Coordination Act; other CSOs are registered with other legal regimes. Companies Limited by Guarantee are registered under the Companies Act, Societies are registered under the Societies Act, and Trusts are registered under the Trustees (Perpetual Succession) Act. The PBO Act of 2013 would replace the NGO Coordination Act, and all CSOs registered with different legal regimes would become “Public Benefit Organizations.” According to Article 5 of the PBO Act, a PBO would be “a voluntary membership or non-membership grouping of individuals or organizations, which is autonomous, non-partisan, non-profit making and which is: (a) organized and operated locally, nationally, or internationally; (b) engages in public benefit activities in any of the areas set out in the Sixth Schedule; and (c) is registered as such by the Authority.”

### **5.2.3 Is Kenya copying Ethiopia’s laws?**

Suba Churchill stated that Kenya seems to be practicing what he referred to as a “cut-and-paste attempt” to emulate the regulatory tricks perfected by Ethiopia. The laws in Kenya seem to be copied from those previously promulgated in Ethiopia. Some are more obvious than others; for instance, the PBO amendment that attempts to restrict foreign funding to just 15% seems to resemble the CSP’s restriction of 10% in Ethiopia. Moreover, the anti-terrorism laws in the two states seem to share many commonalities. Article 75 of Security Laws (Amendment) Act of Kenya appears to mirror Ethiopia’s Article 6 of the ATP on the “encouragement of terrorism,” which is punishable by 10 to 20 years of imprisonment. Article 75 of Security Laws (Amendment) Act states that a person can be imprisoned for 14 years if he/she “publishes or utters a statement that is likely to be understood as directly or indirectly encouraging or inducing another person to commit or prepare to commit an act of terrorism commits an offense.” Similarly, Article 6 of the ATP reads: “Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism.”

Article 3 of Kenya’s Prevention of Terrorism Act’s designation of a terrorist label on entities that act “in association with” another entity designated as a “specified entity”/terrorist organization

seems similar to Article 25(2) of Ethiopia's ATP, which extends the terrorist label to organizations that "directly or indirectly" "[support] or [encourage] terrorism." This can encompass acts such as extending "moral support" (Article 5(1)), which is punishable by 10 to 15 years of imprisonment. What Legal Practitioner and Human Rights Activist said clearly shows the implications of having such vague and broad statements that are open to various interpretations. He said, "If you are considered as a terrorist, which I do not know for a fact, then, my having coffee with you can be enough to get me labeled as a terrorist and put away for good on terrorism charges."

Besides the prolonged pre-trial detention of suspected terrorists in both Ethiopia and Kenya, the anti-terrorism laws in the two states give extensive powers to the security forces. Article 19(1) of Ethiopia's ATP allows the police to "arrest without court warrant any person whom he reasonably suspects to have committed or is committing a terrorist act." Similarly, Article 16 permits the police, with only permission from the Director General of the Federal Police, to "stop vehicle and pedestrian in an area and conduct sudden searches at any time, and seize relevant evidence." Article 23, on the admissibility of evidence in court, allows the use of "intelligence report[s] prepared in relation to terrorism, even if the report does not disclose the source or the method [in which] it was gathered." This even makes it permissible to use torture methods to elicit self-incriminating confessions from people accused of terrorism. Mentioning Article 66(c)(v) of Kenya's Security Laws (Amendment) Act suffices to make the point that security forces are endowed with extensive powers. This provision authorizes the security forces to "do anything considered necessary to preserve national security." Such provisions, which are so broad to fit any activity are making human rights work the most dangerous of all.

The discussions thus far have addressed the "how" research question. The within-case analysis provided shows how transnational human rights pressure at critical political junctures contributed to the unintended negative outcome of authoritarian entrenchment in state behavior in the cases of Ethiopia and Kenya. The following chapter addresses the "why" research question by presenting the analytically relevant systemic and case-specific contextual factors.

## Chapter 6

### Strategic Importance:

### An Aggregation of Contextual Factors

As discussed in the preceding chapters, the pressure applied by transnational human rights advocacy networks during the 2005 and 2007/8 political crises in Ethiopia and Kenya, respectively, ultimately contributed to the unintended negative outcome of authoritarian entrenchment in state behavior. The previous chapter on the two parts of the mechanism explained how this occurred, and the discussion in this chapter sheds light on why those processes played out the way they did. In order to clearly comprehend why target actors (target states and donors) reacted to the transnational human rights pressure applied during the identified critical junctures by constructing counter-discourse and engaging in quiet diplomacy, which was followed by regulatory crackdown, we must consider the conditioning impact of contextual factors. Therefore, the study uses a non-linear analytical framework to account for the relevant systemic and case-specific contextual factors.

Advocacy strategies, especially those rooted in leverage politics, are expected to induce a positive human rights change in states that are conventionally considered to be vulnerable targets, which has not been the case in Ethiopia and Kenya. Western donors, the traditional champions of the human rights cause, have not responded to the pressure applied to them by transnational human rights advocacy networks to use their leverage in pushing these target states to conform to international norms. Although Ethiopia is an archetypally vulnerable state by conventional dimensions of vulnerability, the phrase, “Ethiopia is not vulnerable to transnational human rights pressure” was mentioned several times during the interviews conducted for this study. Due to the contextual factors discussed in the following sections, Ethiopia and Kenya have leverage to counter-balance transnational human rights pressure. As Terrence Lyons explained, if anything, the cases of Ethiopia and Kenya show that “vulnerability is contextual.” Hence, sensitivity to context should be at the heart of any human rights advocacy initiative. When doing advocacy, “we need to take into account background information on the political, cultural, historical, and religious matters,” said International Human Rights Worker 2.

Quite a few studies have tried to analyze the peculiarities of Ethiopia that might compel donors to practice quiet diplomacy by turning a blind eye to the ever-deteriorating human rights practices. Furtado and Smith (2009) point to Ethiopia's negotiation tactics in creating a policy space to compensate for its high aid dependence. Fantini and Puddu (2016) have taken a historical lens and emphasized the role of "high-modernist" ideology in legitimizing the government's development discourse and schemes, which they claim are accompanied by exceptional practices "to bypass the conventional standards of democracy, accountability, and transparency" (100). Dereje's (2011) analysis focuses on ideological divisions in aid relationships. He finds it odd that traditional Western donors, who often subscribe to models along "the liberal continuum," with the private sector taking the upper hand in facilitating economic development, channel huge amounts of aid to a regime that follows an alternative model that hails the role of the state in facilitating economic development. Borchgrevink (2008) points to the failure of donors in advancing a coordinated strategy as the major rationale for the ineffectiveness of donor conditionality in influencing Ethiopia's policies.

Based on the semi-structured expert interviews and the in-depth analysis of primary documents and secondary sources, this study identifies alternative powers and the "new scramble" for Africa, and "security complex" and the war on terror in the HOA as the analytically relevant systemic contextual factors at the international and regional levels of analysis, respectively. The observable implications of these systemic contextual factors in the cases are also analyzed and presented. With regards to the case-specific contextual factors at the domestic level of analysis, political capital, and economic progress and potential are identified. While a scattered mentioning of some of the systemic and case-specific contextual factors has been attempted by preceding studies (Dereje, 2011; Wondwosen, 2013), this study offers a comprehensive analysis of the contextual factors that could have a conditioning impact on the processes of interest for this study. As highlighted in Chapter 3, these contextual factors are not causal agents in their own right; rather, they are existing conditions that affect how the processes of interest play out. These various and, often interlinked, contextual factors are aggregated and referred to as strategic importance.

The study recognizes that the advancement of a pragmatic foreign policy of being aware and taking advantage of these contextual factors by the target states to have been contributing factors for the unintended negative outcome of authoritarian entrenchment in Ethiopia and Kenya. As

George Kegoro puts it, “The Kenyan government knows that it is not the Burundi government [...] so [it] can misbehave.” Many interview subjects similarly stated how aware Ethiopia and Kenya are of the leverage that these contextual factors provide. In the words of International Human Rights Worker 2, these states “play their cards incredibly well.” After all, these contextual factors provide these states with a “negotiating capital” (Whitfield & Fraser, 2010) in their negotiations with donors.<sup>81</sup>

## **6.1 Systemic contextual factors**

The interview subjects pointed out various systemic contextual factors that contributed to the global backsliding of human rights promotion and protection. Many have voiced how liberal values seem to be under attack, and the crackdown on the civic space is one of the obvious signs. Among many others, the increasing normalization of far-right populist politics and the immigration crisis in the West were mentioned. Two of the recurring factors for a deeper analysis of their conditioning impact on the processes of interest are discussed below.

### **6.1.1 Alternative powers and the “new scramble” for Africa**

The contemporary international order is characterized by the coming to an end of the US-led unipolar world with the rise of alternative powers from the Global South (Fantu & Obi, 2010). By offering competing models of development, these powers are redefining the modalities of international development cooperation (Eyben, 2013). This is manifested in the present-day rivalry to “scramble” the “up-and-coming”/“rising” Africa. Africa’s image is radically changing from that of a helpless charity-case often torn by war and famine to a place for business with expanding market opportunities, a cheap and abundant labor force, and untapped natural resources. Africa is home to some of the world’s fastest-growing economies. This explains global actors’ fierce competition in establishing a strong economic foothold in the continent, which has led to an increased influx of foreign capital. Africa’s Foreign Direct Investment (FDI) stock rose from 153,745 million in 2000 to 709,174 million in 2014 (United Nations Conference on Trade and Development, 2015: A7). Some, however, are skeptical about the potential of the rhetoric about

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<sup>81</sup> This is a recently developed analytical approach used to examine the negotiating strategies adopted by eight African states. It looks at the leveraging of prior economic, political, ideological, and institutional conditions in aid negotiations so as to secure policy preferences.

the rising Africa in furthering its interests. As benefits are not visibly trickling down to the poor segment of the continent's population, it seems that only the few linked to the global financial value chains are profiting. Hence, the "Africa rising rhetoric" may ultimately facilitate the further looting of the continent rather than actually lifting it (see *The Economist*, 2013).

With the emergence of alternative powers such as China and India, African states are provided with some policy space to maneuver the terms and the outcomes of their engagements with the donor community. With the case of Kenya, Bachmann (2012: 126) has shown how the changes in global dynamics present states with opportunities for state consolidation that are often executed by "attracting, sustaining, and diversifying international partners." These new avenues of leverage provided to the African states challenge traditional/Western donors' long-established influence in the continent. Further, this impact intensifies because the alternative powers have a different approach to development co-operation (Zimmerman & Smith, 2011). The alternative powers emphasize the importance of sovereign equality, and they frame their engagement with African states as among partners or as "economic co-development" (Anshan, 2007: 73), rather than the conventional donor-recipient relationship. Therefore, they try not to interfere in the internal affairs of their partners, at least in principle, and they avoid attaching governance-related conditions to the development co-operation they provide.

China's strategy, for instance, differs from the Western terms of engagement in Africa that, for long, pushed prescriptions of macro-economic and institutional reforms (Ilunga, 2015). China's strategy in Africa is based on sovereign equality and non-interference in the internal affairs of states (Aning, 2010: 151). This, of course, is subject to some exceptions with regards to foreign policy objectives, such as the "one China policy" (Sun, 2014). As China views human rights promotion and protection as an exclusive domain of internal affairs, it frequently states its dismay at the naming and shaming of African states in different intergovernmental platforms. It argues that they are being judged by Western standards, which it considers to be unfair given the different historical and development trajectories followed in the continent (see Hanqin, 2012). This argument is also used to counter the criticisms regarding its own human rights practices. It thus uses its veto power in the UNSC to shield African regimes from international sanctions. This stance, however, has been criticized for encouraging the further commission of human rights violations.

The underlying motive for the renewed rivalry to “scramble” Africa is not only economic; it also has a political dimension. Cooley (2015) has noted how the increasing acceptance of “civilizational diversity” adversely impacts the protracted hegemony of Western liberal values. The West struggles to sustain its position as a source of global norms by outbidding the alternative powers’ appealing promise of autonomy. For instance, if the “China model” succeeds in Africa, it could show that Western democratic ideals are not universal (Sun, 2014: 1). Lukasz (2011) has stated that, beyond its model of development, ideas such as strategic partnership based on political equality and mutual trust make China attractive in the eyes of the African states. This has led to the impression of a growing Chinese soft power in Africa.

Furthermore, the mere existence of alternative powers limits Western donors’ leverage. The aid conditionality regime that they may attach to human rights practices, or the robust measures that they may threaten to take, such as suspension of aid or the severance of diplomatic relations, can easily be offset by the alternatives powers. According to Levitsky and Way (2006: 383), “Western leverage” over authoritarian states is limited when there is “a regional power that can provide alternative sources of economic, military, and/or diplomatic support.” This explains the increasing fade of the liberally attuned conditionality regime pushed by Western donors. As Samwel Mohochi has argued, due to economic interests, the Western donors “had to water down their approach so that human rights are no longer a pre-requisite for foreign assistance.” This has come at the price of gross human rights violations perpetrated by recipient states against their citizens, he added. The current change in the discourse of international development cooperation, which increasingly subscribes to the aid effectiveness agenda that focuses on quantifiable results, is often attributed as a function of Western donors’ growing fear of losing ground to the alternative powers.

### ***Observable implications***

The leverage that emanates from this systemic contextual factor is advanced by Ethiopia's mastery of pragmatist foreign policy. Ethiopia's foreign policy has always been sensible to favorable opportunity structures in the international system to diversify its alliances. Except for a brief period during the previous military regime, when the country developed an exclusive alliance with the Soviet Union, this trend has been a defining essence of the country's foreign policy



strategy (Clapham, 1988: 239-240). At present, Ethiopia strengthens partnerships with the US, the EU, and China, in addition to reaching out to other emerging powers such as India, Brazil, and Turkey (Institute of Development Studies, 2012). By avoiding absolute reliance on a single power, Ethiopia capitalizes its leverage over powers that are in competition to set up uncontested economic, political, security, and ideological presence in Africa. In general, diversifying alliances contributes to minimizing the likelihood of a robust impact from the leverage politics of transnational human rights advocacy networks.

After expressing his astonishment over the resources that the Ethiopian government spends on foreign lobbyists and advisors, Merera Gudina points out that the government's mindfulness of its leverage over Western donors explains how it managed to counterbalance its vulnerability to transnational human rights pressure. Journalist also shared this view and emphasized the pragmatism of the regime, saying:

*Though it should have been vulnerable to human rights pressure, [...] the system [the regime in power] knows how to counterbalance that by exploiting the West and the East division in the international system. It does not have a static political program or policy, either foreign or domestic, that it sticks with. It changes constantly.*

The same has been true for Kenya's foreign policy. Diversifying alliances dates back to the Cold War years. Bachmann (2012: 130) has described how Kenya managed to exploit the Cold War divide to obtain assistance from various donors by avoiding reliance on one side. The Coalition (2013: 19) states that engaging with "the traditional economic powers, including the USA, Great Britain, and other European countries, as well as emerging players such as China, Brazil, India, and Russia" is important to realizing Kenya's national interest. Zahid Rajan has emphasized how the emergence of the alternative powers changed the dynamics of the relationship between the Kenyan government and the Western donors, saying, "The Chinese changed the equation."

The advantages of diversifying alliances are twofold. First, by showing that they have alternatives, Ethiopia and Kenya compel their Western donors to behave in their favor so that they avoid jeopardizing the economic, security, and other interests that they have in these states. Additionally, if these states lose their leverage that specifically speaks to the interests of their Western donors, then the alliance that they have already established with the alternative powers

would be useful. Here, recalling what happened during the 2005 political crisis in Ethiopia is insightful. When Western donors suspended direct financial assistance to the Federal Government, China stepped in to fill the gap, and it was the first country to applaud the EPRDF's highly contested electoral victory (Gedion, 2009: 5).

### **6.1.2 “Security complex” and the war on terror in the Horn of Africa (HOA)**

These contextual factors are intrinsically intertwined; thus, they are jointly analyzed and presented. The HOA is a geo-politically significant part of the world. By the virtue of its immediacy to the Red Sea, an inlet of the Indian Ocean, it separates Africa and Asia. Through the strait of *Bab-el-Mandeb*, it is connected to the Gulf of Aden, a waterway that provides an outlet for the oil from the Persian Gulf, where the world's largest oil deposits are located. Moreover, to the north of the Red Sea lies the Suez Canal, an artificial waterway that provides an expressway to Europe and Asia without having to navigate around Africa. These geo-strategic perks explain why the superpowers engaged in a furious proxy politics during the Cold War years to have the region under their respective spheres of influence.

The region has some peculiar features that distinguish it from the rest of sub-Saharan Africa. Clapham (2017: 3) has referred to the region as “non-colonial Africa” to highlight the distinctive historical trajectory of the region. He argues that the region was profoundly influenced by the survival struggle of “the only indigenous sub-Saharan African state, the Ethiopian Empire, to retain its independence through the era of colonial conquest” (2017: 3). “Politically unstable,” “volatile,” and “conflict-ridden” are the most common catchphrases used by academics, politicians, and the media to describe the region. This is perhaps a candid depiction of the region's state of affairs given the fact that it has so far witnessed the greatest number of deaths and destruction the world has ever seen after the Second World War (Sharamo & Mesfin, 2011: xii). While it is ravished by innumerable and substantive security challenges with a transnational magnitude, such as the massive refugee outflow, a current global headache, the issue of terrorism and piracy are the most hyped of all.

The theory of “regional security complex” best captures the security challenges of the region (Mesfin, 2011). According to Buzan and Waever (2003), in regions where security problems emanate from the geographic proximity of states, military and political threats are significantly

felt in states of the immediate vicinity. Insights from this theory can illustrate how the political stability of the states in the region is interconnected. States cannot afford to oversee turmoil in the neighboring states, as the spillover effects often transcend national boundaries. This is further exacerbated by the artificial boundaries in the region that are drawn and redrawn, as they were formed with utter disregard for the socio-economic realities of the region to serve colonial interests. Furthermore, the interventionist foreign policies of the states in the region contribute to the security problems. For long, states in the region have advanced foreign policies that involve extending support to proxy forces in neighboring states, a trend often seen as an empirical embodiment of the longstanding realist's notion, "my enemy's enemy is my friend" (Mesfin, 2011: 16).

While the region served as a proxy battling ground for the superpower rivalry during the Cold War years, mainly due to its geo-political positioning, it has come to be considered a major threat to global security following the state collapse in Somalia in 1991. This year also marks the overthrow of the military regime in Ethiopia and the emergence of Eritrea as an independent state. Furthermore, Somaliland, an independent territorial entity in the region that lacks the recognition required for the status of statehood, was also established in 1991. These developments led Clapham (2017: 60) to refer to 1991 as the "year zero in the Horn." After 1991, Somalia was often considered a safe haven for international terrorists. Moreover, the international pirates that operate off its coasts are an increasing threat to the world's energy security (Ulrichsen, 2011). *Al Qaeda* operatives and other fundamentalists in the region often collaborate with like-minded groups in the Arabian Peninsula, creating an "insecurity nexus" between the two regions. Besides the persisting confrontation between the different contending groups in Somalia and the increasing threat from *Al-Shabaab*, an *Al Qaeda*-affiliated insurgency in control of much of southern Somalia, the region suffers from other security threats. The border tension between Ethiopia and Eritrea and the intra-state conflicts in Sudan and South Sudan are only the tip of the iceberg. These security challenges, in addition to other natural catastrophes such as the incidence of drought often followed by famine, have made the region one of the hotspots of humanitarian crises in the world.

The implication of the aforementioned security hurdles is far-reaching in the context of the global war on terror. The eminence of this international initiative following the 9/11 terrorist attacks

on the US elevated the strategic worth of the HOA. In addition to the security problems in Somalia, the frequent terrorist attacks in the region contributed to its consideration as a favorable proliferating ground for international terrorism. Here, a reminder of the region's past with *Al Qaeda* may be useful. Until he left for Afghanistan, Osama Bin Laden, its founder, lived in Sudan from 1991 until 1996 (Shinn, 2004a: 40). These facts attracted considerable attention as security problems have become increasingly transnational in the “globalizing” contemporary world. Attempts thus far to counter terrorism and piracy in the region have chosen an approach of containing the problems at the source, which often entails providing training and equipment to boost the capacity of the states’ security forces in the region. Here, the Combined Task Force 150 (CTF-150) and the Combined Joint Task Force- Horn of Africa (CJTF-HOA) are cases in point.

The CTF-150 is a multinational coalition of the naval forces of 25 states. It is based in Bahrain, and it aims to promote maritime security by countering terrorism and piracy in the Gulf of Aden and the Indian Ocean. The CJTF-HOA, on the other hand, is a task force of the US Africa Command (AFRICOM), the only permanent US military base on the African continent. It is stationed in Camp Lemonnier, Djibouti, with a mission of building the defense capabilities of the states in East Africa to counter violent extremist organizations. Camp Lemonnier is used for drone operations against *Al-Shabaab* in Somalia and the Islamist forces in the Yemen civil war (Clapham, 2017: 174). Djibouti also has France’s, China’s first, and Japan’s only overseas military bases. When it established the base in July 2017, the Chinese government stated that it would be used to resupply navy ships taking part in peacekeeping and humanitarian missions in the region, particularly those operating off the coasts of Somalia and Yemen.

The counter-terrorism and counter-piracy initiatives in the region, like the ones mentioned above, advance a policy of avoiding state collapse. The world has learned from the state collapse in Somalia that terrorist groups can take advantage of power vacuums. If other states in the region were to follow the same path, this would present a much larger threat to the security of the region with extensive spillover effect in the Middle East and the world at large. It seems as if the international community prefers helping authoritarian regimes with poor human rights records to remain in power than taking any action that might have a destabilizing effect. According to Wondwosen (2013: 1019), Western donors fear that more pressure on Ethiopia “could weaken

the state authority [...] and finally might lead the nation and the region to political instability.” With the recognition of the need to mitigate the security risks that emanate from “ungoverned spaces,” Western states increasingly securitize their foreign policies towards regions with fragile states (Bachmann & Hönke, 2010: 101). The states in the HOA usually score among the top 20 in the Fragile States index, which measures states’ vulnerability to conflict or collapse.

### ***Observable implications***

As Ndung’u Wainaina has said, the current tendency to perceive the world in a singular lens of terrorism is the most significant challenge to human rights promotion and protection, especially in states that are at the forefront of the war on terror. Similarly, Henry Maina has explained how difficult it is to pressure Ethiopia and Kenya, as they are the “regional leaders of the anti-terror campaign.” According to the 2002 National Security Strategy of the US, Ethiopia and Kenya, along with Nigeria and South Africa, are the “anchor states” for the US’s security policies in sub-Saharan Africa (Bachmann & Hönke, 2010: 103). Both Ethiopia and Kenya have served as a base for counter-terrorism operations in the HOA. Here, US drone stations at Arba Minch, Ethiopia (now closed), and Camp Simba in Manda Bay, Kenya, are cases in point (see The Washington Post, 2013). Furthermore, the 2007 HOA rendition program, on which the US, Kenya, Ethiopia, and Somalia collaborated, is worth noting (See Human Rights Watch, 2008d). In the post-9/11 international environment, the focus has shifted from human rights to advancing security interests, said Henry Maina. He mentioned Ethiopia’s current membership in both the UNSC and the UN Human Rights Council as examples of this shift. The fact that a state that, at times, refuses to cooperate with its special mechanisms manages to hold such a position in the UN system might come as a surprise, he added. Here, Ethiopia’s continued refusal to grant access to any of the UN special rapporteurs since 2007 is notable.

A trend that Keenan (2013) refers to as “terrorism rent,” an act of benefiting from fabricated terrorism threats, has gained momentum in contemporary Africa, especially in regions with security threats as in the Horn and East Africa. Ethiopia and Kenya have been accused of exploiting the global revulsion of terrorism to perpetrate human rights abuses. They use the terrorist label and the Western-donor-funded counter-terrorism infrastructures to crack down on domestic dissent. Bachmann (2012: 138) explains how the counter-terrorism regime has

strengthened the state's authority in Kenya, especially the resources it provides with the intention of boosting "the policing capacities of intelligence services, the military, and various police units in a country." Here, we are reminded that the Kenyan security forces are often accused of perpetrating gross human rights violations in the context of counter-terrorism operations. Kenya has long been among the top six recipients of the Antiterrorism Assistance Program, one of the US's major counter-terrorism programs, alongside Pakistan, Indonesia, Afghanistan, Jordan, and Iraq (Bachmann, 2012: 135). As the US seems to be advancing a policy of outsourcing the war on terror to regional powers, its security partnerships with Ethiopia and Kenya appear to be a priority that it wants to maintain at all costs, even if it means ignoring the transnational urges to check their deteriorating human rights practices. According to Paulos Milkias, Ph.D., professor of political science at Concordia University, the US is "too scared to go back to Somalia" after the Black Hawk Down incident.<sup>82</sup> This incident took the lives of 18 US troops.<sup>83</sup> "It was another Vietnam on a smaller scale," he added. Similarly, George Morara said,

*The Americans do not have an appetite of going back to Somalia at all. If they can use their drones and their proxies here, they are ok. They do not want to have their people on the ground. They would rather have their people in the air where they can't be reached. They would have us on the ground.*

Carothers (2007: 7) contends that the US administration "puts democracy on the back burner and maintains or cultivates warm relationships with nondemocratic governments" when economic and security interests are at stake. Due to Ethiopia's involvement in fighting "Islamists in Somalia," he argues, the US "has downplayed the democracy issue" (2007: 8). Similarly, this study argues that if it was not for the magnitude of their role in this enterprise, the impact of which escalates due to the "security complex" in the region, the leverage politics advanced by transnational human rights advocacy networks during the identified critical political junctures would have succeeded in inducing Western donors, especially the US, to take a robust stance in

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<sup>82</sup> Phone interview, September 2017.

<sup>83</sup> In December 1992, US troops entered Somalia by the order of the then President George H. W. Bush. The official justification given at the time was to provide support to UN's humanitarian effort in alleviating a famine. After the casualties incurred during the battle of Mogadishu in October 1993, popularly referred to as the "Black Hawk Down" incident, the President at the time, Bill Clinton, withdrew the remaining troops.

addressing human rights concerns in Ethiopia and Kenya. The excerpt from the interview with Yakob Hailemariam captures these points.

*I don't think Ethiopia would be vulnerable as long as terrorism is on the plate. I think they will always take refuge in that. They can get away with murder because of the fact that they are fighting terrorism. God knows how many Ethiopians have been sacrificed for this objective.*

Journalist believes that we would have had a different scenario “if Ethiopia was located where South Africa is,” for instance. In order to comprehend the case-specific implications of the above-discussed systemic contextual factors on Ethiopia, a highlight of its regional hegemony is pertinent. In the words of Clapham (2017: 179), “Any framework for regional order must consequently take the dominant position of Ethiopia as a given.” Due to its vast population, military and economic capabilities, alliances in the continent and beyond, its relative stability and more, Ethiopia is often referred to as the “oasis of stability” in the HOA. Many interview subjects stated that this perception causes Western donors to forgo human rights concerns. Negasso Gidada said:

*The Ethiopian government is well aware that the West would not dare to disrupt a state that is considered to be a linchpin of a highly significant region. The stability of the Red Sea and the Indian Ocean is something that they would not gamble on. The regime uses this not to give in to its vulnerability.*

Furthermore, Ethiopia's hegemony explains why it became the US's key partner in the war on terror. While Ethiopia had a track record of fighting transnational terrorist organizations in the region such as *Al Ittihad al Islamiya* before the issue became a global priority (Shinn, 2004b), its 2006 intervention in neighboring Somalia is often mentioned to underscore its dedication to the cause (Nzau, 2010). This intervention, which lasted from 2006 to 2009, aimed at helping the Transitional Federal Government of Somalia fight against the Islamic Courts Union (ICU), a cluster of Islamic courts that united with the aim of creating a rival government. By 2006, the ICU was in control of much of southern Somalia, including the capital, Mogadishu. Ethiopia's intervention in Somalia, which is referred to as an “invasion” by some, can be argued to have been pursued to advance a legitimate national security interest.

Ethiopia, given its long and un-demarcated border with its politically unstable neighbor Somalia, had to stop the ICU from establishing a legitimate government. If it had, ICU would probably have rekindled the irredentist sentiment of uniting all the Somalis in the region. Many at the time wondered whether ICU was “a Taliban Regime in the making” (Møller, 2009: 30-31). Moreover, it had already declared *Jihad* against Ethiopia; it was armed and financed by Ethiopia’s adversary, Eritrea; and it provided support to the OLF and ONLF, rebellious groups that the Ethiopian government already labeled as terrorist organizations. Ethiopia’s actions can thus be regarded as emanating from the need to safeguard its national security and territorial integrity. This explanation applies to Kenya as well, which is also, even more so, considered a regional hegemon and “anchor state” in the Greater Horn and East Africa. Its military forces also intervened in neighboring Somalia in 2011. Somali nationalism has always been viewed as a threat to Kenya’s national security and territorial integrity. Kenya also shares a border with Somalia and has ethnic Somali citizenry in its North Eastern Province. Kenya’s military intervention in October 2011 was aimed at fighting against *Al-Shabaab*, which started as one of the factions that came out of the disintegrated ICU. This intervention was the first of its kind in Kenya’s history; Kenya had never sent its soldiers abroad before.

While terrorism is a real threat to the national security of Kenya, the counter-terrorism operations thus far have been criticized for not being in compliance with national, regional, and international human rights norms. Kenya is often accused of “fighting terror with terror.” This includes the profiling of certain groups along ethnic and religious lines, which is said to fuel radicalization and help sustain terrorist organizations, as it creates the grievance needed to recruit new members. To borrow Zahid Rajan’s expression, “It is true that Kenya has been a victim of terrorism. But the terrorism card has been used cleverly.” We can mention some of the major terrorist attacks in Kenya. The September 2013 attack on the gate shopping center in Nairobi by *Al-Shabaab*, that took the lives of more than 60 people, was the worst terrorist attack after the 1998 US Embassy bombing that took the lives of over 200 people. The US Embassy bombing in Nairobi was accompanied by another US Embassy bombing in Dar es Salaam, Tanzania, and was carried out by *Al Qaeda*. These US Embassy Bombings were *Al Qaeda*’s first major attacks. Other attacks followed in 2002, on a hotel near Mombasa and on a passenger airplane. Since these attacks, Kenya has been a close ally of the West in the war on terror. Recent attacks, such as the



November 2014 attack on a bus that took the lives of 28 passengers, and another one in April 2015 at Garissa University College that left 148 people dead, are worth noting. *Al-Shabaab* took responsibility for both attacks. Besides the security measures taken to fight terrorism inside Kenya and in neighboring Somalia, Kenya was building a 700-km-long security wall along its border with Somalia. The wall was planned to extend from Mandera to Kiunga, and was intended to prevent *Al-Shabaab* militants from crossing the border to Kenya. The construction, however, is suspended at the time of writing due to diplomatic talks with the government in Somalia.

## **6.2 Case-specific contextual factors**

### **6.2.1 Political capital**

Maintaining partnership with states that have high esteem among their peers is often considered a valuable asset for diplomatic alliances in intergovernmental platforms. The lower sensitivity of Western donors to check human rights situations in Ethiopia and Kenya can be explained by their influential standing in regional and continental affairs. Both Ethiopia and Kenya have always been at the forefront of African nationalism. Their leaders at the time, Emperor Haile Selassie of Ethiopia and Jomo Kenyatta of Kenya, were the founding fathers of the Organization of African Unity (OAU). The OAU was a predecessor of the AU, which was founded on 25 May 1963 in Addis Ababa, Ethiopia. Ethiopia is the only African country that has escaped the onslaught of colonialism by a military victory over European colonial forces. Emperor Minelik II of the Ethiopian Empire fought and defeated the Italians at the battle of Adwa in 1896. Ethiopia is thus considered a true symbol of pride and independence, not just for Africa but for the entire black race. Furthermore, the support it has provided for other African states during their struggle for political independence from colonial rule adds to its political capital in the continent. As a sign of recognition of its monumental place in African political history and identity, the AU is seated in Addis Ababa, making Ethiopia a de-facto African capital.

Similarly, Kenya commands immense political capital in the region and the African continent as a whole. In the words of Morris Odhiambo, Kenya is considered an "anchor state" in East Africa. It often takes a leading role in regional economic and security arrangements, such as the IGAD and the EAC. George Kegoro has used a historical lens to explain the roots of Kenya's political capital in the continent. It served as one of three settler colonies for the British Empire in Africa;

the other two were Zimbabwe and South Africa. Hence, it has a special place in the Commonwealth of Nations, an intergovernmental platform for the former territories of the British Empire.

According to Flesmes (2007), a state has to fulfill four criteria to be considered a regional power: a willingness to assume the role; possession of the necessary resources, both hard and soft competencies; a foreign policy that combines coercive and persuasive instruments; and legitimacy. Ethiopia and Kenya seem to excel at all these conditions. Apart from their large sizes<sup>84</sup> and populations<sup>85</sup>, and their competent military<sup>86</sup> and economic capabilities, their influential involvement in regional affairs, either unilateral or through regional arrangements, qualifies them as regional powers. These states take the lead in settling conflicts and possible threats in the region by either coercive or diplomatic foreign policy instruments. Their engagements in the peace processes in Somalia, Sudan, and South Sudan clearly demonstrate the magnitude of their regional role. In the words of Dereje Feyissa, “It seems safe to say that Ethiopia actively participates in almost all of the contemporary global issues ranging from peacekeeping to the refugee crises, and it is no wonder why donors want to capitalize on this fact.” Correspondingly, George Kegoro has explained how Kenya is seen as a standing ground for international responses to the security and humanitarian challenges not just in the Horn and East Africa but also in Central Africa. In brief, both states take the lead in multilateral initiatives to address regional and continental issues.

Both Ethiopia and Kenya are at the forefront of peacekeeping initiatives in the region and beyond. Terrence Lyons has stated that these states' peacekeeping role in the region is more important than their counter-terrorism engagements. He argues that, as terrorism is as much of a threat to these states as it is to the rest of the world, it is in their best interest to take part in efforts that fight against it. “Ethiopia would not stop fighting *Al-Shabaab* if the US decides to end its war on terror,” he added. But one could also argue the same for peacekeeping operations. Keeping a peaceful neighborhood is also in the best interests of Ethiopia and Kenya. Both are the major contributors of troops to the UN peacekeeping missions. According to Bachmann (2012: 130),

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<sup>84</sup> Ethiopia is the tenth largest state while Kenya is the twenty seventh in Africa.

<sup>85</sup> Ethiopia is the second populous state while Kenya is the seventh in Africa.

<sup>86</sup> On the Global Firepower list for 2018, which rates countries by their military strength, Ethiopia ranks sixth while Kenya ranks fourteenth in Africa.

Kenya, which was among the top 10 troop-contributing states for the UN peace missions until the mid-2000s, has minimized the contribution to 900 personnel in 2009 from what used to be around 2,000 on average in the previous years. This change came about with its increased involvement in regional peace and security mechanisms, such as the African Peace and Security Architecture, which was enabled by Article 4 (h) and (j) of AU's constitutive act.<sup>87</sup> However, it still contributes military and police personnel to the UN Mission in Sudan (UNMIS), the AU-UN Hybrid Mission to Darfur (UNAMID), the UN Mission in the Central African Republic and Chad (MINURCAT), the UN Mission in Liberia (UNMIL), and the UN Mission in the Democratic Republic of Congo (MONUC) (Bachmann, 2012: 130).

To clearly capture the leading roles of Ethiopia and Kenya in the maintenance of regional peace and security, let us closely examine their peacekeeping engagement in Somalia. Both Ethiopia and Kenya have taken an active role in the African Union Mission in Somalia (AMISOM) since its establishment in January 2007. AMISOM is AU's "longest-running, largest, most costly, and most deadly operation" (Williams, 2018: 172). Ethiopia and Kenya are among the six troop-contributing states to AMISOM; the other four are Uganda, Burundi, Djibouti, and Sierra Leone. AMISOM is AU's peacekeeping mission which, in addition to its main mandates such as facilitating the delivery of humanitarian aid, supports the Federal Government of Somalia (FGS) in its fight against *Al-Shabaab*. FGS is the current internationally recognized government in Somalia, which was established in August 2012 when the tenure of the Transitional Federal Government (TFG) ended. TFG was the internationally recognized government of Somalia between 2004 and 2012, and it replaced the Transitional National Government (TNG), the first internationally recognized government of Somalia after the state collapse in 1991. TNG was in power from 2000 until 2004. The other notable example is their engagement in the peace processes in the two Sudans. Kenya hosted the IGAD-facilitated negotiations between the Sudanese government and the Sudanese People's Liberation Movement (SPLM) that led to the signing of the historic Comprehensive Peace Agreement (CPA) in 2005. Ethiopia also plays a lead mediating role in the peace negotiations, and

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<sup>87</sup> Article 4 (h) allows the Union to intervene in a member state in cases of grave human rights violations such as war crimes, genocide and crimes against humanity. And Article 4(j) allows a member state to request intervention from the Union to restore peace and security.

it is the chief contributor to the peacekeeping force stationed in the Abyei area between Sudan and South Sudan.

In addition to their peace and security roles, both Ethiopia and Kenya undertake developmental initiatives to advance regional integration. Ethiopia's hydroelectric dam construction is a case in point; the Grand Ethiopian Renaissance Dam (GERD)'s potential to advance regional integration is immense. When completed, GERD would be the largest hydroelectric power plant in Africa, and it would generate exportable surplus electricity to neighboring states. Another initiative of this nature is the Lamu Corridor Project of Kenya. This large infrastructure project has various components: ports, highway, railway, crude oil pipeline, airports, oil refinery, and resort cities. And this would integrate Kenya, Ethiopia, and South Sudan. Furthermore, it is pertinent to note that Kenya provides a sea outlet to the landlocked Uganda and Rwanda.

### **6.2.2 Economic progress and potential**

In the ever-changing discourse surrounding global political economy, we often hear about the advantages of seizing systemic windows of opportunity to jump-start economic growth. As discussed already, the alternative powers present such an opportunity, which developing economies such as Ethiopia and Kenya can use to their advantage. As they transform into capital-intensive economies, the alternative powers outsource their labor-intensive jobs to the developing economies. According to Mills, Obasanjo, Herbst, and Davis (2017: 134), with ever-increasing labor unit costs as China ascends the industrial ladder into higher-value-added goods production, 85 million jobs would be vacated within a decade. Hence, developing economies need to devise strategies to amplify their comparative and competitive advantages. This necessitates a range of reforms ranging from creating an enabling economic policy framework to ensuring political stability and investing in infrastructural development (Mills et al., 2017:134). Ethiopia, for instance, advances a policy of attracting private sector investment as part of the GTP II (see National Planning Commission, 2015) by stressing its competitive advantage - low labor cost.<sup>88</sup> GTP II is a five-year plan to guide national developmental endeavors from 2015 until 2020 with the objective of making Ethiopia a middle-income economy by the year 2025. It is an extension

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<sup>88</sup> In Mills et al. (2017: 236), Hailemaraim Desalegn, the previous Prime Minister of Ethiopia, who was in office at the time of the interview for the book, was quoted saying that Ethiopia has the lowest salaries in Africa for even its top leadership, with his official salary being less than 400 USD a month.

of the GTP I, which was operational from 2010 until 2015. As a result, Ethiopia increased FDI flows from 221 million USD in 2009 to 1.2 billion USD in 2014 (United Nations Conference on Trade and Development, 2015: A7). FDI from the US alone was 4 billion USD between 2013 and 2015 (Mills et al. 2017: 237).

Similar to Ethiopia's GTP, Kenya has a development plan called Kenya Vision 2030 that was launched in 2008 and aims at transforming Kenya into "a newly industrializing, middle-income country providing a high quality life to its citizens by the year 2030" (Government of the Republic of Kenya, 2007: 1). As mentioned in the previous chapters, Kenya fortunately managed to become a middle-income economy in 2014 after the GDP was recalculated with updated data from the better performing sectors - agricultural, manufacturing, telecommunications, and real estate. It was found that the GDP is actually 25% larger than what previous statistics had indicated. Abdul Noormohamed explained how the transformation in Kenya's status from a low-income country to a middle-income country changed donors' engagement. "Most of their funding now goes to trade instead of aid," he said.

According to Africa Development Bank (AfDB) (2018: 8), East Africa is the fastest-growing region in the African continent, with a growth rate of 5.6% in 2017. The growth rate is estimated to increase to 5.9% and 6.1% in 2018 and 2019, respectively. The Bank's categorization of East Africa encompasses both Ethiopia and Kenya. Kenya's GDP grew by 5.8% in 2016, which declined to 5% in 2017 (2018: 150). Among other factors, the prolonged controversy that followed the August 2017 presidential election was mentioned as responsible for the decline in growth. The economy, however, is expected to recover and grow by 6.2% in 2019. Similarly, Ethiopia's economy is one of the top-performing economies in Africa with a growth rate of 8% in 2015/16 (African Development Bank Group, 2017: 261), making it one of the "African lion" economies (McKinsey Global Institute, 2010). According to the WB, Ethiopia's economy experienced growth averaging 10.5% a year from 2005/6 to 2015/16. As one of its former Presidents, Negasso Gidada, has explained, Ethiopia is an attractive destination from an economic perspective. The not-yet exploited natural resources, the abundant and cheap human resources, and the large market are priorities that Western donors and alternative powers want to take advantage of. This explains why they have traded the human rights cause for their economic interests. The same can be said about Kenya, especially after the recent discovery of oil reserves.

With insights that are drawn from the two case studies from the Horn and East Africa, this chapter and the preceding ones have shown how and why transnational human rights pressure at critical political junctures contributes to the unintended negative outcome of authoritarian entrenchment in state behavior. The final chapter in the following offers some concluding remarks on the issues of interest along with some recommendations that are put forth by the different experts interviewed for the study.

## Chapter 7

### Zooming out of the Cases:

### Concluding Remarks and Recommendations

Carrying out legalized actions that are often accompanied by administrative predicaments to systematically criminalize and/or incapacitate civil society actors seems to have become the new normal for contemporary authoritarian regimes. They have slowly abandoned the conventional ways of holding onto power. In the words of Henry Maina:

*States are learning and evolving in how to deal with the civil society actors. They are moving away from what would be seen as brutal use of state power to using a legalized process of managing what they would consider dissent, or people who are doing human rights work. In the past, they would just detain people without trial, for instance. Now they use laws to say that the actors have not paid taxes or that they are complicit in terrorist acts. They make sure that the law is structured to allow the freezing of assets the minute such claims are made, and they know that the issue would go through a lengthy court process. Even if you get acquitted of any crime, the damage is already done as intended.*

The strategies conventionally employed by transnational human rights advocacy networks are no longer effective in the contemporary international environment, especially those that rely on leverage politics. Western donors, who can positively influence the human rights policies and practices of recipient states, are less sensitive to the pressure applied on them to push target states to conform to international norms. While one would assume that the political cost of maintaining close ties to repressive regimes would outweigh donors' security and the economic interest, this proved not to be the case with the presented within-case evidence from the Horn and East Africa. Donors have traded the human rights cause for other contemporary priorities, said Abdul Noormohamed. As Henry Maina explains, "The old donor conditionality approach has failed in the current multi-polar world." Hence, transnational human rights advocacy networks must be creative in devising strategies that work better with the context at hand. This starts with

having a clear "understanding of the tools that are left in the toolbox," said Njonjo Mue. For him, coming to terms with the current reality is halfway to the solution:

*We must, first of all, accept that the ground has shifted. [...] During the 90's, there was an alignment of what we advocated for and the international environment's permissibility for such ideas. Donors were effective leverage. There was an alignment of our interest and theirs. [...] There was a window of opportunity in the early 90s. That was a time when change was blowing across the continent.*

At present, there is a change in the modality of aid; it is being pulled away from the civil society, especially from organizations engaged in advocacy. Unlike the 1990s, when civil society was endowed with considerable resources from the Western donor community to advance the human rights cause, there is a significant shrinking of funding, said Abdul Noormohamed. He too feels that recognizing this change is important, saying, "Let us be clear. We are not going to get funding as we did back in the 1990s. That model has gone." Similarly, Morris Odhiambo said that learning about this shift has to take place, and one must realize that the traditional ways of advocacy no longer work. He then listed a series of questions to be answered to determine a way forward. "How do we move forward? How do we get resources? How can we mobilize the public into funding this cause?" he asked. These questions are particularly applicable to domestic human rights NGOs in the Global South. In the words of Njonjo Mue, "We are alone," and the sooner one realizes that, the better. At the moment, Western donors are experiencing democratic recession themselves, which "has robbed them of the moral high ground to come and lecture anyone about anything," he added. The increasing normalization of far-right populist parties as influential political forces in Europe, the global migration crisis, the Brexit in the UK, and the success of President Donald Trump's anti-immigration campaign in the US were some of the issues that the interview subjects pointed out to note that the Western donors are preoccupied with their own democratic backsliding. This has led many to voice the need for self-reliance. In the words of Boniface Mwangi, photojournalist and politician, "The time has come for Africa to sort out itself."<sup>89</sup> In the introductory essay of *Freedom in the World 2018: Democracy in Crisis* report, Michael J. Abramowitz, the president of Freedom House, states that 2017 marks

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<sup>89</sup> in-person interview, November 2017, Nairobi, Kenya.



the year when political rights and civil liberties declined to their lowest point in more than a decade. He writes:

*Democracy is in crisis. The values it embodies - particularly the right to choose leaders in free and fair elections, freedom of the press, and the rule of law - are under assault and in retreat globally (Freedom House, 2018: 1).*

The rising “democracy charade,” a situation in which autocracies use elections as an instrument to pose as democracies without granting civil and political rights that make democracy meaningful, risks undermining human rights (Human Rights Watch, 2008a). The within-case insights provided by this study shed light on the political nature of human rights. As stated above, human rights issues are increasingly taking a peripheral position to security and economic interests. This is particularly true with regards to target states that are strategically important - those that draw leverage from systematic and case-specific contextual factors to counter-balance their seemingly vulnerable positions. According to Mesfin Woldemariam:

*The human rights issue is more of a political instrument than a normative principle. Think of it as a wound, and those countries [vulnerable target states] as wounded. It is something to touch so as to make it hurt, when and if needed. [...] It is a rhetoric that is often used as an instrument of fear. Look at Saudi Arabia; it roundly violates human rights, but it gets to carry on with business as usual.*

Many interview subjects have expressed how the increasing normalization of self-censorship and insecurity in the civic space is backtracking the progress made on human rights promotion and protection. Samwel Mohochi has said that the continued attempts to muzzle dissenting voices in Kenyan civil society seem to be “a gradual mutation to autocratic rule” by abandoning the hard-won civil and political rights. Journalist also expressed how the situation in Ethiopia often makes him feel that the state is “regressing in civilization.” Furthermore, the interview subjects have stated how counter-productive it would be in the long run if these states continue attempting to shrink or close the civic space. Jon Abbinik said, “They think it is smart. But it is not smart at all.” Similarly, a regional director of an international NGO who wishes to remain anonymous and who is referred as Regional Director of an International NGO, hopes that these states would realize

how “unsmart” this approach is.<sup>90</sup> She said that the more brutal they get, the more attention they generate; she thinks that they are working against themselves. “When you close doors, people would always find another door to resistance,” she added. This stance is also shared by Erick Komolo (Ph.D.), a lawyer, who argued that attempts to clamp down on the civil society generate media coverage and sympathy for civil society actors.<sup>91</sup> Therefore, it creates more publicity for the cause. According to Abdul Noormohamed, history has taught us that such a policy is “doomed to fail”; “You can't tell people who have already known what their rights are that they do not have those rights any longer. You can't tell a child who has already tasted a candy that he/she can no longer have some.”

It is important to note that the above statements were made within the Kenyan context, where there is a relatively independent media functioning, as opposed to Ethiopia. The EPRDF coalition-run government in Ethiopia seems to have managed to effectively institutionalize information blackout, or what Former Senior Official at the EHRC referred to as “the criminalization of freedom of expression.” To further explain what he meant, he used the print media as an example, “as the broadcast media is solely owned and operated by the government”; he provided a detailed explanation of the “unwritten and untold” legal and procedural bottlenecks that limit its significance. Terrence Lyons explained how transnational human rights pressure, which he described as “frustratingly ineffective,” created an opportunity for the Ethiopian government to send a message to its Western donors that it would not be bossed around and lectured on issues. The counter-discourse against transnational human rights advocacy networks created the opportunity to make the abovementioned point “without having to directly tell this to their Western donors,” he said. “HRW's criticism strengthened the EPRDF. They used the pressure to work for them rather than against them,” he added. In sum, the pressure feeds Ethiopia's counter-discourse, which continues painting international and domestic human rights NGOs as promoters of a Western agenda and itself as a victim. Many interview subjects view the framing of human rights criticisms as “Western” to be a sheer defense mechanism. In the words of Abdul Noormohamed:

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<sup>90</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>91</sup> In-person interview, November 2017, Nairobi, Kenya.

*[...] In the region, there is this belief that when people rise up and demand their rights, they are considered to be told by someone from outside to do so. It is foreigners who have come and told them that they have the right to have liberty or have a voice. Why would a foreigner come and tell you that you have these freedoms? In fact, it is the other way around. Foreigners came to colonize us and take away our freedoms. It is we who rose up in our struggle for independence. [...] Our struggle for justice has always been local.*

Human Rights Lawyer I said that he measures progress with its human benefits, which he fails to see in Ethiopia. “As I see the situation getting worse, I cannot help but feel that our efforts are not bearing positive results,” he said. Note that a “network may have failed to accomplish its mission in terms of changing human rights practices in a tangible way, but it may still have made a big difference in other aspects” (Tang, 2009: 237). An insight from the field research in Nairobi, Kenya, is helpful to elaborate this point. Few interview subjects in Nairobi hesitated to use the expression “negative outcome” to refer to the impact of the transnational human rights pressure placed on advocacy targets during the 2007/8 political crisis. However, they agree that the impact goes further than a null effect. For them, the impact lies in a hard-to-categorize gray area. In other words, while they recognize the unintended negative consequences of the pressure in triggering the legal and administrative crackdown on the civic space, they, at the same time, gave credit to some positive outcomes of the pressure.

Zahid Rajan, for instance, stated how the civil society served as “the voice of the people” during the days of the political crisis, without which there would have been a “complete muzzling” of opposing views. Similarly, others who are comfortable with labeling the outcome in state behavior as negative also mentioned some positive gains that resulted from the pressure. George Morara acknowledges the pressure’s impact in broadening the democratic space in Kenya. Ndung’u Wainaina said not to discard the positive impact on the greater public good, which he explained in terms of empowering the public with information. George Kegoro warned not to forget the fact that “the pressure brought international attention to Kenya, which resulted in an investigation of the crimes committed.” Hence, “It is not all gloom,” said Felix Kyalo. He then discussed the work that has strengthened the capacity of institutions and the acknowledgment of issues that

were not in the public domain before, such as the historical injustices that fueled the political crisis.

## **7.1 The way forward**

As the insights from the Horn and East Africa show, transnational human rights pressure at critical political junctures on strategically important target states, though seemingly vulnerable, may defeat its purpose of effecting a positive human rights change and instead contribute to an unintended negative outcome in state behavior. Can the solution be applying more pressure? Some interview subjects suggested simply persevering in applying more pressure. They argued that, with sustained pressure and resilience by members of transnational human rights advocacy networks, change would eventually happen. “We just have to be vigilant to all the efforts that are made to gag the civil society,” said Teresa Omondi. Similarly, Regional Director of an International NGO believes that when the dissenting voices keep resisting and become strong, the states will eventually give in. On the other hand, would abstaining from putting any pressure be the solution? Should one simply wait for opportunity structures to open up at the system level that could possibly nullify the strategic importance of these target states? These options cannot be the only ones on the table, especially in dealing with issues that require prompt addressing as human rights violations. Thus trying to discover innovative ways to ensure that transnational human rights pressure does not contribute to an unintended outcome in state behavior seems logical. To this end, the interview subjects were asked to provide recommendations for advocacy strategies to be followed by transnational human rights advocacy networks to guarantee a positive human rights change.

The provided recommendations are context-sensitive; there is no one-size-fits-all toolkit to be followed for effective advocacy. There is wide-ranging diversity across various indicators between different regions within a single state, let alone across the different regions of the world that have followed divergent historical and development trajectories. Hence, “it would be wrong to assume that identical efforts will play out in similar ways across world regions” (Hafner-Burton & Ron, 2007: 382). For human rights advocacy to have resonance, sensitivity to context is important. As quoted in the preceding chapter, Human Rights Worker I said, “we need to take into account background information on the political, cultural, historical, and religious matters” in doing

advocacy work. The background information about the specific crisis at hand should not just be geographic; it should also extend to include lessons from similar cases from other spaces and times, said Ndung'u Wainaina. While we should subscribe to the universality of human rights, practical implementation demands sensitivity to contextual circumstances. Unless we contextualize the understanding of human rights, we would compromise the promise of its effective promotion, protection, and fulfillment.

Thematically organized sets of recommendations provided from the interview subjects are presented below. While most are particularly applicable to domestic human rights NGOs, the lessons are transferable to other members of transnational human rights advocacy networks in the Global South, both CSOs and individual activists. These recommendations are said to be helpful to induce the intended positive human rights change in the contemporary environment, where the human rights cause is increasingly pushed to the periphery and the conventional ways of applying pressure to target states prove to be ineffective.

### ***Strategic target-actor-mapping***

Target-actor-mapping that is well informed by a thorough power analysis helps identify the actors that are better positioned to effect the change one wants to bring. All advocacy efforts would then be targeted towards those actors. Ndung'u Wainaina argues that a strategic target-actor-mapping is necessary for the success of transnational human rights pressure at critical political junctures:

*You need to know who your actors are. Forget about the faces of the actors you see. You need to know the backroom actors, the real actors that shape things. You need to know who is who. Who are the players here? What is their interest?*

He then described what he referred to as “understanding their end game.” Putting oneself in the shoes of the potential actors and running possible scenarios of how things might transpire before they actually do better inform the choice of advocacy strategies. This is pertinent to make sure that “we are not barking at the wrong tree,” he added.

### ***Strengthening South-South cooperation***

It is true that building alliances of solidarity across borders, both South-South and South-North, is crucial for transnational human rights pressure to induce a positive human rights change. However, with regard to domestic human rights NGOs in the Global South, many interview subjects stressed the need for the precedence of a South-South cooperation over a South-North one. Suba Churchill said, “the problems that we are facing are more or less similar,” which makes South-South cooperation more meaningful.

### ***Re-thinking resource mobilization strategies***

To address the massive shrinking of funding for domestic civil society actors, rethinking the conventional resource mobilization strategies, which were mainly dependent on Western donors, was said to be critical. Of all the alternative sources of resources that the interviewed experts mentioned, reliance on local philanthropy was the major one. In the words of Abdullahi Halakhe, “human rights groups need to be thinking beyond donor money. Change in African countries will happen at a point where the donor dollar ends.” He then went on to state that the human rights cause would not truly be anchored in local reality if it is not funded locally. In doing so, the focus should be to engage with the public rather than targeting wealthy individuals who are the beneficiaries of the establishment; “they would not want to fund causes that would shake up the status quo,” said Abdul Noormohamed. Furthermore, reaching out to private foundations was also mentioned as an alternative to the conventional resource mobilization strategies. “There are also other smaller foundations in the North that we are not even aware of because we have gotten so spoiled by the bilateral,” said Njonjo Mue. To summarize, many have recommended that domestic human rights NGOs brainstorm about context-informed, innovative, and sustainable ways of generating resources.

### ***Owning the process***

To provide a context for what is presented in this section, let us first highlight some of the often-vented grievances of domestic human rights NGOs against their international counterparts. According to Ndung’u Wainaina, the human rights movement is often “Westernized,” and this has many implications for domestic human rights NGOs. He said, “We are seen more as a

subordinate. [...] The issue is about who owns what.” He then discussed what he referred to as “ownership of the discourse,” arguing that international human rights NGOs often publish reports without acknowledging the contribution of domestic organizations in their attempt to “look original.” He thinks that, as they are better positioned in commanding resources, it would be better if international human rights NGOs served as “a middle link” between domestic actors and other actors with a position of power to make a difference, such as policymakers in the West. Similarly, Erick Komolo said that building the capacity of domestic actors so that they would be able to own the process must be a priority. In the words of George Kegoro, “If they are enabled, they can effect change on the ground.”

The subjects interviewed from international organizations also shared this view. For Robert Herman, vice president of international programs at Freedom House, building transnational linkages and working at the grassroots level is important for the success of transnational human rights pressure.<sup>92</sup> Similarly, Tor Hodenfield, UN advisor at CIVICUS, said that any advocacy strategy by an international human rights NGO must be grounded in supporting domestic human rights organizations.<sup>93</sup> This is especially important in repressive environments where appealing to the morality of states is meaningless, as they openly subvert international norms. In such settings, according to Henry Maina, there is a need to integrate context and local knowledge in designing an advocacy strategy to deliver better results:

*Developing a symbiotic relationship between locals and internationals helps because it is a process of co-creating the advocacy plans and strategies, as opposed to one creating them and another one implementing, which then balkanizes people, makes people feel that they have been used in a cause that they do not believe in.*

Furthermore, what Njonjo Mue referred to as “re-connecting with the public” was one of the recommendations offered towards owning the process. He explained how domestic CSOs in the Global South have been disconnected from their constituencies whose interests they claim to represent. He referred to the relationship as “theoretical” and said:

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<sup>92</sup> Phone interview, November 2017.

<sup>93</sup> Skype interview, March 2018.

*Let us ask ourselves this question. Who would miss us if we are banned? That is a very important question that many of us are not willing to ask ourselves because we fear that the answer might be that nobody would miss you. [...] It is true that we cannot have the kind of relationship that politicians have with their voters. That is not realistic. But at the same time, we need to find a way to make sure that we are relevant and the people we serve have an actual and real connection with us to the extent of asking them to commit to us [...] in funding some of our activities.*

Erick Komolo said, “We need to continue to create sufficient momentum for reforms here through local activists. We need to do it ourselves.” Similarly, Boniface Mwangi stated that getting in touch with the grassroots is the first step to effecting a meaningful change. According to Justus Nyang’aya, country director for Kenya at AI, informing and educating the public on how to hold governments accountable is one form of empowerment that both domestic and international members of transnational human rights networks should provide as part of their social accountability.<sup>94</sup> By helping raise the political consciousness of the public, CSOs would create informed partners. Education is particularly important with issues that are “very precarious,” such as human rights, said Yash Pal Ghai, Ph.D., retired professor of law and chair of the Constitution of Kenya Review Commission.<sup>95</sup> This is pertinent in the Global South, where states simply put human rights principles in their constitutions without the knowledge and the intention to actually implement them, he added.

### ***Diversifying partnerships***

Forming and maintaining partnerships with different actors, or what Mike Gachanja referred to as having “different pockets of pressure,” is important for the success of transnational human rights pressure. After all, “leverage comes by coming together,” said Justus Nyang’aya. This is vital in the contemporary context in which “shaming and naming has run its course,” said Abdullahi Halakhe. “We have to engage the state or parts of the state, and there should be a serious and sustained engagement with an end in mind,” he added. Changing the dynamics of engagement with the state was also voiced by other interview subjects. Felix Kyalo, for instance, explained

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<sup>94</sup> In-person interview, November 2017, Nairobi, Kenya.

<sup>95</sup> In-person interview, November 2017, Nairobi, Kenya.



the importance of identifying allies within the state, especially with independent or should-be independent institutions such as the judiciary. Such engagement would enable these institutions to maintain their independence, said Mike Gachanja.

George Morara discussed partnering with what he referred to as “alternative voices of reason,” including the religious sector, the business community, and the middle class. As economic interests increasingly outweigh normative issues such as human rights, involving the business sector and tapping into its resources is helpful, according to Ndung’u Wainaina. In the words of Peter Kiama, “to be relevant, talk trade.” Furthermore, increased engagement at the international and regional intergovernmental platforms was also recommended.

### ***Exploring the potential of digital platforms***

By sharing first-hand information that would not be available otherwise on modern-day digital platforms such as social media, domestic actors would be empowered to frame the content and direction of the human rights discourse, said Ndung’u Wainaina. This less resource-intensive strategy is an effective way of mobilizing the public, said Mike Gachanja.

### ***Emulating Amnesty International?***

Tobias Hagmann, Ph.D., professor of international development and comparative politics at Roskilde University, recommended shifting the focus from donor governments to their public.<sup>96</sup> Making the citizens of donor states the prime targets of advocacy would increase the cost for donors if they continue being complicit in the commission of human rights violations, even with regards to strategically important target states. This could be done by making the citizens in the donor states aware that their tax money is abused to fund human rights violations. This would encourage them to hold their governments to account. Hence, donor governments would be forced to push target states to conform to international human rights norms. This recommendation resembles the strategy followed by membership-based human rights organizations such as AI, which uses its members in the donor states to pressure their governments to use their leverage to change the human rights situations of target states that they

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<sup>96</sup> Skype interview, September 2017.

support. AI members write petitions, letters, and emails, and they make phone calls to those in a position of power to change the situation of concern. According to Justus Nyang'ay:

*The way AI operates makes it hard for donors to ignore, as it reaches out to citizens of target donors to put pressure on their own government or the agencies that they support, saying their money should not be used in the ways that it did. This pressure [...] is a different ball game because it is their own people that are questioning. Not the people that are directly affected. [...] We make sure that they cannot ignore us. This strategy of campaign and activism is far-reaching.*

### **Context-sensitive issue framing**

Jon Abbinik said that framing in a “tactful and moderate tone,” especially in authoritarian contexts, is important. One needs to “make them feel that they are not being attacked,” he added. Similarly, Senior Official at the DAG stated, “In the Ethiopian context, one may need to use a different approach. For instance, one might need to raise these [human rights] issues in a way that would not make someone feel that they are just criticizing and not appreciating what is being done.” The issue of framing is particularly important in information politics, which often works by naming and shaming.

### **Building fluid social movements**

Some interview subjects stated that, rather than an institutionalized networking, fluid social movements that would not need registration would decrease the likelihood of being targeted by states. In light of some of the political developments that have recently taken place in Ethiopia, this recommendation seems to bear better results in contexts in which formally organized civil society actors are systematically criminalized or incapacitated by states. The appointment of a new Prime Minister who appears progressive, though from the same EPRDF coalition that has been in power since 1991 and that has 100% of the seats in the current legislature, is a case in point. This change is partly attributed to the continued protests that have marked Ethiopia's political scene since the year 2014. These protests were pioneered by the *Oromo protests*, highlighted in Chapter 3, which were mostly directed by unorganized and youth-led social movements. This shows that initiating collaborations, or emulating their ways, with fluid social

movements is the most logical path to consider for domestic human rights NGOs to maintain their relevance. This would also be an interesting agenda for future research.

To summarize, the insights presented from the Horn and East Africa show that transnational human rights pressure at critical political junctures does not predictably yield a positive change in state behavior, even in states that are seemingly vulnerable. As discussed throughout the dissertation, it rather contributed to the unintended negative outcome of authoritarian entrenchment in state behavior in the cases of Ethiopia and Kenya. The pressure that transnational human rights advocacy networks placed on target actors during the 2005 and 2007/8 political crises in Ethiopia and Kenya, respectively, contributed to the relentless attempt to effectively institutionalize rule by law. Members of transnational human rights advocacy networks, especially domestic human rights NGOs, are made targets for the subsequent legal and administrative retributions. State institutions that ought to be independent are often instrumentalized to perpetrate assaults on the civic space.

The study's inductively developed context-bound theory of a mechanism, with a middle-range generalizability, would be useful in providing a better explanation of cases in which transnational human rights pressure contributes to a null effect or an unintended negative outcome in state behavior. This is particularly true for cases in which the target states are seemingly vulnerable. Besides the theoretical and methodological contributions of the study highlighted in Chapter 1 and detailed in Chapter 3, the analysis on the conditioning impact of the relevant systemic and case-specific contextual factors shows why the processes of interest played out the way they did in these cases. This information, which is presented in Chapter 6, has theoretical and policy implications. By showing how systemic factors such as the war on terror and the ever-rising interest in building economic, diplomatic, and security partnerships with African regional powers counteract human rights promotion and protection, the study provides an empirical embodiment to the chasm between human rights rhetoric and practice. This should not be the case in places where human rights violations are rampant, as in the Horn and East Africa. Contrary to what is frequently proclaimed, this study illustrates that human rights are used as political instruments that are systematically invoked when and if needed to advance policy objectives. The key takeaway is the importance of devising context-sensitive advocacy strategies in dealing with similar cases. This is especially significant because the reality is that transnational human rights pressure does

not necessarily and predictably induce a positive human rights change in strategically important, yet vulnerable, target states.

# Interview Subjects

## Ethiopia

### *Anonymous*

1. Academic and Legal Practitioner. In-person interview, February 2016, Addis Ababa, Ethiopia.
2. Former Senior Official at the EHRC. In-person interview, February 2016, Addis Ababa, Ethiopia.
3. Human Rights Lawyer 1. In-person interview, September 2016, Addis Ababa, Ethiopia.
4. Human Rights Lawyer 2. In-person interview, February 2016, Addis Ababa, Ethiopia.
5. Human Rights Lawyer 3. In-person interview, February 2016, Addis Ababa, Ethiopia.
6. Human Rights Lawyer 4. In-person interview, February 2016, Addis Ababa, Ethiopia.
7. International Human Rights Worker 1. In-person interview, January 2016, Addis Ababa, Ethiopia.
8. Journalist. In-person interview, February 2016, Addis Ababa, Ethiopia.
9. Legal Practitioner and Human Rights Activist. In-person interview, February 2016, Addis Ababa, Ethiopia.
10. Official 2 at the DAG. In-person interview, February 2016, Addis Ababa, Ethiopia.
11. Official 2 at the EU Delegation to Ethiopia. In-person interview, February 2016, Addis Ababa, Ethiopia.
12. Senior official at the CSA. In-person interview, February 2016, Addis Ababa, Ethiopia.
13. Senior Official at the DAG. In-person interview, February 2016, Addis Ababa, Ethiopia.
14. Senior Official at the EHRC. In-person interview, February 2016, Addis Ababa, Ethiopia.
15. Senior Official at the EU Delegation to Ethiopia. In-person interview, February 2016, Addis Ababa, Ethiopia.

### *Non-anonymous*

16. Dereje Feyissa, Ph.D., senior advisor at the International Law and Policy Institute (ILPI). In-person interview, September 2016, Addis Ababa, Ethiopia.

17. Getachew Reda, acting Minister at the time of the interview of the Government Communications Affairs office (GCAO). In-person interview, February 2016, Addis Ababa, Ethiopia.
18. Merera Gudina, Ph.D., opposition politician and professor of political science at Addis Ababa University. In-person interview, February 2016, Addis Ababa, Ethiopia.
19. Mesfin Woldemariam, Ph.D., retired professor of geography and philosophy at Addis Ababa University. In-person interview, February 2016, Hawassa, Ethiopia.
20. Negasso Gidada, Ph.D., a Former President of Ethiopia (1995-2001). In-person interview, February 2016, Addis Ababa, Ethiopia.
21. Yacob Hailemariam, Ph.D., retired professor of law at Norfolk State University and the former Senior Prosecutor of the International Criminal Court (ICC) for Rwanda. In-person interview, February 2016, Addis Ababa, Ethiopia.

## **Kenya**

### ***Anonymous***

22. Regional Director of an International NGO. In-person interview, November 2017, Nairobi, Kenya.

### ***Non- anonymous***

23. Abdul Noormohamed, program officer at Open Society Initiative for Eastern Africa. In-person interview, November 2017, Nairobi, Kenya.
24. Abdullahi Halakhe, East Africa researcher at Amnesty International (AI). In-person interview, October 2017, Nairobi, Kenya.
25. Boniface Mwangi, photojournalist and politician. In-person interview, November 2017, Nairobi, Kenya.
26. Collius Aseka, technical assistant at the Aid Effectiveness Secretariat (AES). In-person interview, November 2017, Nairobi, Kenya.
27. David Jesse, youth political activist. In-person interview, October 2017, Nairobi, Kenya.
28. Davinder Lamba, director at the Mazingira Institute. In-person interview, October 2017, Nairobi, Kenya.

29. Dinah Musindarwezo, executive director at the African Women's Development and Communication Network (FEMNET). In-person interview, November 2017, Nairobi, Kenya.
30. Erick Komolo, Ph.D., lawyer. In-person interview, November 2017, Nairobi, Kenya.
31. Felix Kyalo, country representative for Kenya at the International Development Law Organisation (IDLO). In-person interview, November 2017, Nairobi, Kenya.
32. George Kegoro, executive director at the Kenya Human Rights Commission (KHRC). In-person interview, October 2017, Nairobi, Kenya.
33. George Morara, deputy chair at the Kenya National Commission on Human Rights (KNCHR). In-person interview, November, 2017, Nairobi, Kenya.
34. Henry Maina, regional director of Eastern Africa at Article 19. In-person interview, October 2017, Nairobi, Kenya.
35. Joash Dache, secretary/chief legal officer at the Kenya Law Reform Commission (KLRC). In-person interview, November 2017, Nairobi, Kenya.
36. Justus Nyang'aya, country director for Kenya at Amnesty International (AI). In-person interview, November 2017, Nairobi, Kenya.
37. Mike Gachanja, deputy director at the Centre for Rights Education and Awareness (CREAW). In-person interview, November 2017, Nairobi, Kenya.
38. Morris Kaburu, director for legal analysis at the Executive Office of the President. In-person interview, November 2017, Nairobi, Kenya.
39. Morris Odhiambo, regional project director of East and Horn of Africa at Freedom House. In-person interview, October 2017, Nairobi, Kenya.
40. Ndung'u Wainaina, executive director at the International Centre for Policy and Conflict (ICPC). In-person interview, October 2017, Nairobi, Kenya.
41. Njonjo Mue, senior advisor at the Kenyans for Peace Through Truth and Justice (KPTJ). In-person interview, October 2017, Nairobi, Kenya.
42. Otsieno Namwaya, Kenya researcher at the Human Rights Watch (HRW). In-person interview, November 2017, Nairobi, Kenya.
43. Peter Kiama, executive director at the Independent Medico - Legal Unit (IMLU). In-person interview, October 2017, Nairobi, Kenya.
44. Samwel Mohochi, executive director at the International Commission of Jurists (ICJ-Kenya). In-person interview, November 2017, Nairobi, Kenya.

45. Soy Cherutoh Mercy, legal officer at the NGO Coordination Board. In-person interview, October 2017, Nairobi, Kenya.
46. Suba Churchil, president at the Civil Society Reference Group (CS-RG). In-person interview, October 2017, Nairobi, Kenya.
47. Teresa Omondi, executive director at the Federation of Women Lawyers (FIDA-Kenya). In-person interview, November 2017, Nairobi, Kenya.
48. Yash Pal Ghai, Ph.D., retired professor of law and chair of the Constitution of Kenya Review Commission. In-person interview, November 2017, Nairobi, Kenya.
49. Zahid Rajan, executive editor at Awaaz Magazine. In-person interview, October 2017, Nairobi, Kenya.
50. Zarina Patel, human rights activist. In-person interview, October 2017, Nairobi, Kenya.

### **Skype/phone interviews**

#### ***Anonymous***

51. International Human Rights Worker 2. Skype interview, September 2017.

#### ***Non-anonymous***

52. Firoze Manji, Ph.D., author and activist. Skype interview, October 2017.
53. Jon Abbink, Ph.D., professor of politics and governance in Africa at Leiden University. Skype interview, October 2017.
54. Muthoni Wanyeki, director of the Africa Office at Open Society. Phone interview, November 2017.
55. Paulos Milkias, Ph.D., professor of political science at Concordia University. Phone interview, September 2017.
56. Robert Herman, Ph.D., vice president of international programs at Freedom House. Phone interview, November 2017.
57. Sandra Diesel, head of cooperation at the Swedish International Development Cooperation Agency (SIDA-Kenya). Phone interview, November 2017.
58. Terrence Lyons, Ph.D., associate professor of conflict analysis and resolution at George Mason University. Skype interview, September 2017.



59. Tobias Hagmann, Ph.D., professor of international development and comparative politics at Roskilde University. Skype interview, September 2017.
60. Tor Hodenfield, United Nations advisor at World alliance for Citizen Participation (CIVICUS). Skype interview, March 2018.

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